



CLOSED
STACKS



1/5

SAN FRANCISCO
PUBLIC LIBRARY

REFERENCE BOOK

Not to be taken from the Library

GOVERNMENT INFORMATION CENTER
SAN FRANCISCO PUBLIC LIBRARY

MAY 23 1984

SAN FRANCISCO PUBLIC LIBRARY



3 1223 04401 7284



SF City Attorney's Office

1977 ERRATA SHEET

Index:

page 1, line 11
delete entire citation

page 1, line 17
for Section 5(d) read Section 3(d)

77-12, Opinion No.
page 4, line 40
for Section 5(d) read Section 3(d)

FEB 28 1978

DOCUMENTS DEPT.
S.F. PUBLIC LIBRARY

DOCUMENTS DEPT.
SAN FRANCISCO
PUBLIC LIBRARY

* 352.9

Sa 52a

1977

CALIFORNIA LAWS AND OFFICIAL DOCUMENTS CITED

| | |
|---|------------------|
| Administrative Code Title 18, Sec. 313(h) | 77-36 |
| Title 14, Sec. 15037(a) | 77-55 |
| Attorney General Opinion | |
| 36 Ops Atty Gen 175 | 77-1 |
| 52 Ops Atty Gen 264 | 77-14 |
| Index Letter 74-227 | 77-49 |
| Constitution | |
| Article I, Sec. 1 | 77-19 |
| Article I, Sec. 7 | 77-35 |
| Article XI, Sec. 4(c) deleted | 77-11 |
| Article XI, Sec. 4(e) | 77-11 |
| Article XI, Sec. 6(b) | 77-11 |
| Article XI, Sec. 3(a) | 77-11 |
| Article XI, Sec. 3(d) | 77-12 |
| Article XI, Sec. 5(b) | 77-12 |
| Article XI, Sec. 5(d) (3d) | 77-12 |
| Article XI, Sec. 10 | 77-50 |
| Article XVI, Sec. 18 | 77-27 |
| Board of Equalization Rule 313(h) | 77-36 |
| Code of Civil Procedure | |
| Sec. 1094.5 | 77-16 |
| Sec. 1161 | 77-11 |
| Sec. 1209 thru 1222 | 77-11 |
| Sec. 1209(3) | 77-11 |
| Sec. 1209(5) | 77-11 |
| Elections Code, Sec. 4084 | 77-12 |
| Evidence Code, Sec. 950-962 | 77-17 |
| Fish and Game Code | |
| Sec. 2150 | 77-47 |
| Sec. 2156 | 77-47 |
| Government Code | |
| Sec. 810.2 | 77-19 |
| Sec. 810.6 | 77-19 |
| Sec. 815.2 | 77-19 |
| Sec. 818.2 | 77-19 |
| Sec. 820.2 | 77-19 |
| Sec. 821 | 77-19 |
| Sec. 1090 | 77-18 |
| Sec. 1125 | 77-49 |
| Sec. 1126 | 77-49 |

JUN 27 1978

DOCLINKING DESK
B-1 FOL L



Government Code

| | |
|---|-------|
| Sec. 1770 | 77-11 |
| Sec. 1770(h) | 77-11 |
| Sec. 3060 | 77-11 |
| Sec. 3201-3209 | 77-9 |
| Sec. 3201-3209 | 77-24 |
| Sec. 3207 | 77-24 |
| Sec. 3505.1 | 77-49 |
| Sec. 3500-3510, Meyers-Miliias-Brown Act | 77-2 |
| Sec. 3500-3510, Meyers-Miliias-Brown Act | 77-43 |
| Sec. 6250-6261, Public Records Act | 77-36 |
| Sec. 6250-6261, Public Records Act | 77-19 |
| Sec. 6253 | 77-19 |
| Sec. 6253(a) | 77-36 |
| Sec. 6254 | 77-19 |
| Sec. 6254(a) | 77-36 |
| Sec. 6256 | 77-19 |
| Sec. 6257 | 77-19 |
| Sec. 6258 | 77-19 |
| Sec. 6259 | 77-19 |
| Sec. 34461 | 77-12 |
| Sec. 54950-54961, Ralph M. Brown Act | 77-48 |
| Sec. 54950-54961, Ralph M. Brown Act | 77-1 |
| Sec. 54950-54961, Ralph M. Brown Act | 77-17 |
| Sec. 54950 | 77-17 |
| Sec. 54952.5 | 77-17 |
| Sec. 54953 | 77-17 |
| Sec. 54957 | 77-17 |
| Sec. 54957 | 77-1 |
| Sec. 54957.9 | 77-1 |
| Sec. 54961 | 77-48 |
| Sec. 81000-91014, Political Reform Act of 1974, Fair Political Practices Act | 77-38 |
| Sec. 82015 | 77-38 |
| Sec. 82044 | 77-38 |

Health and Safety Code

| | |
|---|-------|
| Sec. 307.3 | 77-41 |
| Sec. 33018 (former) | 77-30 |
| Sec. 33220 (new) | 77-30 |
| Sec. 33372 | 77-30 |
| Sec. 33391 | 77-30 |
| Sec. 33392 | 77-30 |
| Sec. 33430 | 77-30 |
| Sec. 33431 | 77-30 |
| Sec. 33432 | 77-30 |
| Sec. 34322 | 77-27 |
| Sec. 34322.2 | 77-27 |
| Sec. 37910-37964, Marks-Foran Residential Rehabilitation Act of 1973 | 77-46 |
| Sec. 37922 | 77-46 |
| Sec. 37922.2 | 77-46 |
| Sec. 37922.5 | 77-46 |
| Sec. 37923 | 77-46 |



| | |
|---|-------|
| Penal Code | |
| Sec. 166 | 77-11 |
| Sec. 630-637.2 | 77-19 |
| Sec. 689 | 77-11 |
| Sec. 3075 | 77-25 |
| Sec. 3076 | 77-25 |
| Sec. 12301-12312 | 77-20 |
| Public Records Act | |
| (see Government Code, Secs. 6250-6261) | |
| Public Resources Code | |
| Sec. 21000-21176, California Environmental Quality Act | 77-55 |
| Sec. 21151 | 77-55 |
| Revenue and Taxation Code | |
| Sec. 1605.4 | 77-36 |
| Vehicle Code | |
| Sec. 22507 | 76-23 |
| Sec. 22507 | 77-32 |
| Sec. 22507 | 77-37 |
| Statutes 1923, Ch. 88 | 77-56 |



SAN FRANCISCO LAWS AND OFFICIAL DOCUMENTS CITED

Administrative Code

| | |
|---|-------|
| Sec. 2.24 | 77-12 |
| Sec. 3.05-3.014 | 77-15 |
| Sec. 16.99 | 77-41 |
| Sec. 16.200 thru 16.222, Employer-Employee Relations | 77-43 |
| Sec. 16.203(a) | 77-43 |
| Sec. 16.204 | 77-43 |
| Sec. 16.210 | 77-43 |
| Sec. 16.501 thru 16.519, Municipal Election Campaign Contribution Control Ordinance, (Art 12) | 77-38 |
| Sec. 16.508(a) | 77-38 |
| Sec. 32.1-32.95 | 77-46 |

Charter

| | |
|------------------|-------|
| Sec. 1.103 | 77-41 |
| Sec. 1.103 | 77-49 |
| Sec. 2.100 | 77-49 |
| Sec. 2.100 | 77-12 |
| Sec. 2.101 | 77-49 |
| Sec. 2.200 | 77-48 |
| Sec. 2.302 | 77-50 |
| Sec. 2.400 | 77-49 |
| Sec. 3.201 | 77-44 |
| Sec. 3.500 | 77-25 |
| Sec. 3.500 | 77-44 |
| Sec. 3.500 | 77-16 |
| Sec. 3.500 | 77-1 |
| Sec. 3.501 | 77-25 |
| Sec. 3.501 | 77-51 |
| Sec. 3.527 | 77-6 |
| Sec. 3.530 | 77-40 |
| Sec. 3.531 | 77-40 |
| Sec. 3.531 | 77-45 |
| Sec. 3.534 | 77-45 |
| Sec. 3.542 | 77-49 |
| Sec. 3.543 | 77-51 |
| Sec. 3.550-3.552 | 77-54 |
| Sec. 3.552 | 77-54 |
| Sec. 3.552 | 77-56 |
| Sec. 3.661 | 77-50 |
| Sec. 3.661 | 77-44 |
| Sec. 3.670 | 77-26 |
| Sec. 3.680 | 77-26 |
| Sec. 6.202 | 77-6 |
| Sec. 6.203 | 77-6 |
| Sec. 6.205 | 77-6 |
| Sec. 6.205 | 77-49 |
| Sec. 6.207 | 77-50 |
| Sec. 6.305 | 77-6 |

Charter

| | |
|--------------|-------|
| Sec. 8.407 | 77-5 |
| Sec. 8.407 | 77-8 |
| Sec. 8.500 | 77-49 |
| Sec. 8.559-6 | 77-13 |
| Sec. 8.585-6 | 77-13 |
| Sec. 9.100 | 77-12 |
| Sec. 9.100-1 | 77-12 |
| Sec. 9.103 | 77-49 |

City Attorney Opinion

| | |
|---|-------|
| 90 dated September 17, 1947 OVERRULED | 77-46 |
| 332 dated February 23, 1951 | 77-56 |
| 456 dated November 2, 1951 | 77-56 |
| 558 dated June 12, 1952 | 77-56 |
| 618 dated October 20, 1952 | 77-56 |
| 636 dated December 8, 1952 | 77-56 |
| 683 dated March 27, 1953 OVERRULED | 77-46 |
| 707 dated June 24, 1953 OVERRULED | 77-46 |
| 845 dated May 26, 1954 | 77-30 |
| 1163 MISTYPED, SHOULD READ 1183 | 77-56 |
| 1166 dated May 10, 1957 | 77-56 |
| 1183 dated August 5, 1957 | 77-56 |
| 1184 dated August 6, 1957 | 77-56 |
| 1262 dated May 28, 1958 | 77-56 |
| 4007 dated September 17, 1947 OVERRULED | 77-46 |
| 4161 dated July 6, 1948 | 77-23 |
| 6228 dated May 25, 1962 | 77-56 |
| 6243 dated August 28, 1962 | 77-56 |
| 63-31 | 77-21 |
| 67-95-A | 77-51 |
| 68-84 | 77-31 |
| 68-85 | 77-51 |
| 69-64 | 77-31 |
| 69-78 | 77-31 |
| 70-52 OVERRULED | 77-46 |
| 70-68 | 77-56 |
| 71-22 | 77-31 |
| 73-49 | 77-1 |
| 73-172 | 77-9 |
| 74-54 | 77-9 |
| 74-54 | 77-24 |
| 74-94 | 77-4 |
| 74-130 | 77-31 |
| 75-108 | 77-20 |
| 76-23 | 77-37 |
| 76-23 | 77-32 |
| 76-64 | 77-52 |
| 77-9 | 77-24 |
| unnumbered dated 10-6-76 | 77-29 |
| unnumbered dated 1-21-77 | 77-40 |
| unnumbered dated 5-25-77 | 77-15 |



Charter

| | |
|---------------|-------|
| Sec. 6.305 | 77-49 |
| Sec. 6.401 | 77-15 |
| Sec. 7.300 | 77-49 |
| Sec. 7.306 | 77-15 |
| Sec. 7.309 | 77-27 |
| Sec. 7.403 | 77-56 |
| Sec. 7.403(b) | 77-56 |
| Sec. 7.501 | 77-53 |
| Sec. 7.503 | 77-53 |
| | |
| Sec. 8.100 | 77-4 |
| Sec. 8.100 | 77-49 |
| Sec. 8.100(e) | 77-41 |
| | |
| Sec. 8.103 | 77-49 |
| Sec. 8.104 | 77-11 |
| | |
| Sec. 8.105 | 77-49 |
| Sec. 8.105(c) | 77-18 |
| Sec. 8.105(e) | 77-18 |
| Sec. 8.105(f) | 77-18 |
| Sec. 8.105(g) | 77-18 |
| Sec. 8.106 | 77-11 |
| Sec. 8.107 | 77-11 |
| | |
| Sec. 8.200 | 77-25 |
| Sec. 8.200 | 77-50 |
| Sec. 8.300 | 77-3 |
| Sec. 8.311 | 77-9 |
| Sec. 8.311 | 77-24 |
| | |
| Sec. 8.320 | 77-22 |
| Sec. 8.320 | 77-49 |
| Sec. 8.321 | 77-22 |
| Sec. 8.324 | 77-22 |
| Sec. 8.326 | 77-21 |
| Sec. 8.327 | 77-45 |
| Sec. 8.330 | 77-22 |
| Sec. 8.331 | 77-22 |
| Sec. 8.332 | 77-22 |
| Sec. 8.401 | 77-52 |
| Sec. 8.401 | 77-8 |
| Sec. 8.402 | 77-52 |
| Sec. 8.404 | 77-23 |
| Sec. 8.404 | 77-52 |
| Sec. 8.405 | 77-23 |
| Sec. 8.405 | 77-51 |
| Sec. 8.405 | 77-52 |
| Sec. 8.405 | 77-33 |
| Sec. 8.407 | 77-52 |
| Sec. 8.407 | 77-2 |



| | |
|---|-------|
| City Planning Commission Resolution 7499 | 77-53 |
| City Planning Code, Art. 3 | 77-53 |
| Civil Service Commission | |
| Rule 5.07 | 77-39 |
| Rule 10.02 | 77-21 |
| Rule 19 | 77-22 |
| Rule 22.07 | 77-49 |
| Rule 29.03 | 77-18 |
| Rule 34 | 77-44 |
| Fire Code | |
| Sec. 306(e) | 77-7 |
| Sec. 5.24 | 77-7 |
| Sec. 20.01 | 77-7 |
| Sec. 20.03 | 77-7 |
| Sec. 20.03(b) | 77-7 |
| Sec. 20.06 | 77-7 |
| Ordinance | |
| Business Tax (Gross receipts) 245-68 | 77-35 |
| Employee Relations (Administrative Code, Secs. 16.200-16.222) 313-76 | 77-43 |
| Municipal Election Campaign Contribution Control (Administrative Code, Article 12) | |
| 114-76 | 77-29 |
| 114-76 | 77-38 |
| Payroll Expense Tax 275-70 | 77-35 |
| Residential Permit Parking (Traffic Code, Art. 15) | |
| 312-76 | 77-32 |
| 312-76 | 77-37 |
| Park Code | |
| Sec. 15 | 77-54 |
| Sec. 16 | 77-54 |
| Part II, Municipal Code | |
| Page 2, MISTYPED, Line 15 should read Part III, and Line 17 should read Part III | 77-7 |
| Part III, Municipal Code | |
| Sec. 26 | 77-30 |
| Sec. 143 | 77-7 |
| Sec. 501-518, Transient Occupancy Tax | 77-27 |
| Sec. 502 | 77-27 |
| Sec. 515 | 77-27 |



| | |
|--|-------|
| Retirement Board Rules of Practice and Procedure | |
| Rule 18 | 77-16 |
| Salary Standardization | |
| Ord. 1975-76, Sec. 4 H | 77-39 |
| Ord. 1975-76, Sec. 4 H (5) | 77-39 |
| Ord. 1975-76, Sec. 4 H (7) | 77-39 |
| Ord. 1975-76, Sec. 8.1.2 | 77-34 |
| Ord. 1976-77, Sec. 2 J | 77-39 |
| Ord. 1976-77, Sec. 4 H | 77-39 |
| Ord. 1976-77, Sec. 5 A | 77-34 |
| Ord. 1976-77, Sec. 14 | 77-39 |
| Ord. 1977-78, Sec. 7 | 77-51 |
| Supervisors, Board of | |
| Rule 6 | 77-48 |
| Rule 7 | 77-48 |
| Rule 50 | 77-48 |
| Traffic Code | |
| Art. 15, Residential Permit Parking Ordinance | 77-37 |
| Art. 15, Residential Permit Parking Ordinance | 76-23 |
| Art. 15, Residential Permit Parking Ordinance | 77-32 |
| Art. 15, Sec. 302 | 77-37 |



UNITED STATES LAWS AND OFFICIAL DOCUMENTS CITED

United States Code Annotated

| | |
|-------------------------------------|-------|
| Title 5, Secs. 1501-1508, Hatch Act | 77-42 |
| Title 5, Sec. 1502 | 77-42 |
| Title 5, Sec. 1502 (a) | 77-42 |
| Title 5, Sec. 1503 | 77-42 |

Constitution

| | |
|----------------|-------|
| 1st amendment | 77-1 |
| 1st amendment | 77-9 |
| 14th amendment | 77-32 |
| 14th amendment | 77-35 |
| 14th amendment | 77-37 |

National Environmental Policy Act (see 42 U.S.C. Sec. 4321)

77-55

Vienna Convention

| | |
|------------|-------|
| Article 32 | 77-14 |
| Article 32 | 77-28 |



INDEX * CITY ATTORNEY OPINIONS 1977

1977
OPINION NUMBER

| | |
|---|-------|
| ADMINISTRATIVE HEARING | |
| Disqualification for bias | 77-16 |
| AIRPORT EXPANSION PROGRAM | |
| Environmental Impact Report | 77-55 |
| AIRPORT REVENUE BONDS | |
| Administrative Code, Secs. 3.05-3.014 not applicable | 77-15 |
| AIRPORT, SAN FRANCISCO INTERNATIONAL | |
| Control tower, application of CEQA | 77-55 |
| AIRPORTS COMMISSION | |
| Airport Expansion Program, EIR | 77-55 |
| Members: selection, terms of office. Proposition B. Election of August 2, 1977 | 77-12 |
| Revenue Bond Issue, proposed \$90 million | 77-15 |
| AMENDMENT, CHARTER | |
| Format and effect | 77-12 |
| AMENDMENT, CONSTITUTIONAL | |
| "amendment" defined | 77-12 |
| AMMUNITION, FIREARM | |
| State preemption | 77-20 |
| ANAYA, ROSARIO | |
| Board of Education, residence requirements | 77-4 |
| ANIMAL CONTROL see also WILD ANIMALS | |
| APPOINTIVE OFFICE | |
| Residence requirements | 77-4 |
| AQUATIC PARK | |
| Rowing Club leases | 77-56 |
| ARBITRATION | |
| Limitations, Civil Service Commission, Rule 34 | 77-44 |
| ASSESSMENT APPEALS BOARD | |
| Access to official and personal files of the Board | 77-36 |



| | |
|--|-------|
| ASSESSOR | |
| Election and term of office, Propositions A & B, Election of August 2, 1977 | 77-12 |
| AUTHORITY see POWER | |
| AVERAGE MAXIMUM WAGE | |
| Charter, Sec. 8.405 | 77-33 |
| Wage schedules under negotiation at time of certification | 77-33 |
| BALLOT MEASURES | |
| Multiple measure committee, contribution | 77-29 |
| BALLOT PROPOSITIONS | |
| "A", Election of August 2, 1977 | 77-12 |
| "B", Election of August 2, 1977 | 77-12 |
| "G", Election of November, 1967 | 77-52 |
| "M", Election of November 5, 1974 | 77-13 |
| "P", Election of November 2, 1976 | 77-15 |
| BOARD OF EDUCATION see EDUCATION, BOARD OF | |
| BOARD OF PAROLE COMMISSIONERS see PAROLE COMMISSIONERS, BOARD OF | |
| BOARD OF PERMIT APPEALS see PERMIT APPEALS, BOARD OF | |
| BOARD OF SUPERVISORS see SUPERVISORS, BOARD OF | |
| BOARDS AND COMMISSIONS, APPOINTIVE | |
| Residence requirements | 77-4 |
| Staff | 77-25 |
| BOARDS AND COMMISSIONS, CHARTER | |
| Charter, Sec. 8.100(a) | 77-41 |
| Created by Board of Supervisors | 77-41 |
| Residence requirements | 77-4 |
| Residence requirements | 77-41 |
| Staff | 77-25 |
| BOARDS AND COMMISSIONS, ELECTIVE | |
| Elected members be and remain residents for incumbency | 77-4 |



| | |
|---|-------|
| BOARDS AND COMMISSIONS, STATUTORY | |
| Residence requirements | 77-41 |
| Public member | 77-25 |
| Staff | 77-25 |
| BOAS, ROGER, CHIEF ADMINISTRATIVE OFFICER, ADDRESSEE | |
| Payroll expense tax computation | 77-10 |
| BONDED DEBT LIMIT | |
| Airport revenue bonds not included | 77-15 |
| Housing authority bonds for acquisition of International Hotel | 77-27 |
| BOREMAN, GILBERT, CLERK, BOARD OF SUPERVISORS, ADDRESSEE | |
| Airport revenue bond issue | 77-15 |
| Ammunition, state preemption of control | 77-20 |
| Business tax exemption for small businesses | 77-35 |
| Committee meetings outside City Hall | 77-48 |
| Conflicting propositions on one ballot, effect if both passed | 77-12 |
| Contempt judgment, Sheriff | 77-11 |
| Grievance procedure, Civil Service Commission Rule 34 | 77-44 |
| Residence Requirements, Local Advisory Board, Child Health and Disability Prevention Program | 77-41 |
| Retirement allowances, Fire and Police Departments | 77-13 |
| Wage schedules under negotiation at time of certification | 77-33 |
| Wage survey, prevailing rate | 77-8 |
| Wild animal control ordinance | 77-47 |
| BRB HOMES, INC. | |
| Diamond Heights Redevelopment Project | 77-30 |
| BRADY, THOMAS P., CHAIRMAN, ASSESSMENT APPEALS BOARD, ADDRESSEE | |
| Access to official and personal files of the Board | 77-36 |
| BROWN ACT see RALPH M. BROWN ACT | |



| | |
|---|-------|
| BUDGET ANALYST | |
| Tax Collector, Business tax collection | 77-35 |
| BUILDING PERMIT APPLICATIONS | |
| Reclassification and code text amendment, effect of | 77-53 |
| Code text amendment and reclassification, effect of | 77-53 |
| BUSINESS TAX BOARD OF REVIEW, ADDRESSEE | |
| Payroll expense tax computation | 77-10 |
| BUSINESS TAXES: "GROSS RECEIPTS" TAX, (Ordinance 245-68); see also PAYROLL EXPENSE TAX, (Ordinance 275-70) | |
| BUSINESS TAXES: PAYROLL EXPENSE TAX, (Ordinance 275-70); see also "GROSS RECEIPTS" TAX, (Ordinance 245-68) | |
| CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) see PUBLIC RESOURCES CODE, SECS. 21000-21176 | |
| CALIFORNIA ENVIRONMENTAL QUALITY ACT | |
| Airport expansion program | 77-55 |
| Control tower, San Francisco International Airport | 77-55 |
| CALIFORNIA FISH AND GAME COMMISSION | |
| Regulations do not prevent municipal control ordinances | 77-47 |
| CAMPAIGN CONTRIBUTION CONTROL ORDINANCE | |
| Multiple measure committee | 77-29 |
| CANNON, H. LEROY, LEGAL ADVISER, BOARD OF EDUCATION, ADDRESSEE | |
| Paraprofessional employees retroactive appointment | 77-50 |
| CAPITAL IMPROVEMENTS ADVISORY COMMITTEE | |
| Airport revenue bond, different amounts | 77-15 |
| CASPER, ANDREW C., CHIEF, FIRE DEPARTMENT, ADDRESSEE | |
| Firefighter elected to Board of Supervisors, incompatible offices | 77-49 |
| Like work-like pay, appointment to exempt rank | 77-51 |
| Permit requirements for multiple motion picture theatres | 77-7 |
| Working hours, attendance employee members at board meetings | 77-26 |
| CEQA (CALIFORNIA ENVIRONMENTAL QUALITY ACT) see PUBLIC RESOURCES CODE, SECS. 21000-21176 | |



| | |
|--|-------|
| CHARTER | |
| Ordinance cannot limit effect | 77-15 |
| CHARTER AMENDMENT | |
| Format and effect | 77-12 |
| CHIEF ADMINISTRATIVE OFFICER | |
| Selection, confirmation and term of office, Proposition "B", Election of August 2, 1977 | 77-12 |
| Transfer of funds | 77-6 |
| Transient occupancy tax, allocation of funds | 77-27 |
| CHILD HEALTH AND DISABILITY PREVENTION PROGRAM | |
| Local Advisory Boards, Health and Safety Code Sec. 307.3 | 77-41 |
| Local Advisory Boards, residence requirements | 77-41 |
| CHILD PLACEMENT WORKER | |
| Foster care program | 77-18 |
| CITY ATTORNEY | |
| Election and term of office, Propositions A and B, Election of August 2, 1977 | 77-12 |
| CITY PLANNING CODE | |
| Building permit applications during code text amendment and reclassification period | 77-53 |
| CITY PLANNING COMMISSION | |
| Building permit applications during code text amendment and reclassification period | 77-53 |
| Building permit applications within redevelopment project area, discretionary review | 77-30 |
| Previous Planning Commission action | 77-30 |
| CITY PLANNING, DEPARTMENT OF | |
| Airport Expansion Program, draft EIR | 77-55 |
| Redevelopment Plans, adoption and change | 77-30 |
| CIVIL SERVICE CLASSIFICATIONS | |
| Power of Employee Relations Division to place or transfer within unit system | 77-43 |



| | |
|---|-------|
| CIVIL SERVICE COMMISSION | |
| Bilingual police officer, creation of position | 77-40 |
| Certification of graduated pay scales for single rate employees (Transit operators) | 77-23 |
| Certification of wage schedules | 77-23 |
| Conflict of interest, Charter Sec. 8.105g | 77-18 |
| Conflict of interest, Civil Service Commission Rule 29.03 | 77-18 |
| Decision reconsidered, Civil Service Commission Rule 5.07 | 77-39 |
| Examinations to maintain adequate registers of eligibles | 77-22 |
| Grievance procedure, scope and application | 77-44 |
| Lacks power re departmental decisions, Charter Sec 3.201 | 77-44 |
| Lacks power re departmental decisions, Charter Sec 3.500 | 77-44 |
| Overtime determination | 77-34 |
| Power of employment, extent | 77-44 |
| Power of personnel, extent | 77-44 |
| Power to adopt rules and regulations re after hour activities, employments, enterprises | 77-18 |
| Power to authorize emergency appointment | 77-22 |
| Power to authorize limited tenure appointment | 77-22 |
| Power to authorize non-civil service appointment | 77-22 |
| Power to create or abolish civil service positions | 77-25 |
| Power to give designation and classification for civil service positions | 77-25 |
| Power to make unit determinations | 77-43 |
| Power to reclassify positions | 77-50 |
| Power to reconsider final decision, Civil Service Commission Rule 5.07 | 77-39 |
| Power to select contract or civil service employees | 77-3 |
| Powers and duties, Administrative Code, Sec. 16.204 | 77-43 |



| | |
|---|-------|
| CIVIL SERVICE COMMISSION (continued) | |
| Prevailing rates of wages, Charter Sec. 8.407 | 77-52 |
| Promotional examination required | 77-21 |
| Successor to powers and duties of Municipal Employees Relations Panel | 77-43 |
| Wage schedules, Transit operators | 77-23 |
| Wage schedules under negotiation at time of certification | 77-33 |
| Wage surveys, Charter Sec. 8.407 | 77-2 |
| Wage surveys data, discretion | 77-5 |
| Wage surveys, effective date of rates | 77-8 |
| CIVIL SERVICE EXAMINATION | |
| Entrance examination, priority | 77-21 |
| Promotional examination required | 77-21 |
| CIVIL SERVICE LISTS | |
| Absence of, temporary vacancy in promotive rank, Police Department | 77-22 |
| Absence of, appointment to fill temporary vacancy | 77-22 |
| Examination announcement qualifications, variations | 77-40 |
| Priority, entrance and promotional lists | 77-21 |
| Priority, promotional and entrance lists | 77-21 |
| CIVIL SERVICE ENTRANCE LISTS | |
| Priority, promotional and entrance lists | 77-21 |
| CIVIL SERVICE PROMOTIONAL LISTS | |
| Priority, promotional and entrance lists | 77-21 |
| CIVIL SERVICE POSITIONS | |
| Board of Supervisors has power to create or abolish | 77-25 |
| Boards and Commissions | 77-25 |
| Civil Service Commission authorizes proper designation and classification | 77-25 |
| Created by appropriation ordinance of Board of Supervisors | 77-25 |
| Created by appropriation ordinance of Board of Supervisors | 77-50 |



| | |
|--|-------|
| CIVIL SERVICE POSITIONS (continued) | |
| Dual appointments to a single rank | 77-51 |
| Like work-like pay appointment, Fire Department | 77-51 |
| Reclassifications | 77-50 |
| CIVIL SERVICE RANK, EXEMPT | |
| Like work-like pay, appointment, Fire Department | 77-51 |
| CIVIL SERVICE REGISTERS | |
| Commission to maintain | 77-22 |
| CIVIL SERVICE UNIT SYSTEM | |
| Civil Service Commission | 77-43 |
| Employee Relations Division | 77-43 |
| CODE ENFORCEMENT | |
| RAP areas | 77-46 |
| COMMISSIONS GENERALLY see BOARDS AND COMMISSIONS | |
| COMMUTER see also NON-RESIDENCE, RESIDENCE | |
| COMMUTER | |
| Motor vehicles | 77-32 |
| Motor vehicles | 77-37 |
| COMMUNITY DEVELOPMENT FUNDS | |
| Housing authority use for International Hotel | 77-27 |
| International Hotel | 77-27 |
| COMMUNITY MENTAL HEALTH SERVICES | |
| Staff, in-patient psychiatric unit, San Francisco General Hospital | 77-3 |
| COMPENSATION see SALARY | - |
| CONFIDENTIAL RELATIONS see also CONFLICT OF INTEREST | |
| CONFLICT OF INTEREST | |
| Charter Sec. 8.105 | 77-18 |
| Civil Service Commission Rule 29.03 | 77-18 |
| Placement worker to operate home care facility | 77-18 |
| CONSTITUTIONAL AMENDMENT | |
| "Amendment" defined | 77-12 |



| | |
|---|-------|
| CONSULAR OFFICES | |
| Property tax exemption, Ireland | 77-28 |
| Property tax exemption, New Zealand | 77-14 |
| CONTEMPT, CIVIL | |
| Distinguished | 77-11 |
| CONTEMPT, CRIMINAL | |
| Distinguished | 77-11 |
| CONTEMPT JUDGMENT | |
| Discussion | 77-11 |
| Legal consequences | 77-11 |
| CONTEMPT PROCEEDING | |
| Civil Procedure Code distinguished from Penal Code | 77-11 |
| Penal Code distinguished from Civil Procedure Code | 77-11 |
| CONTRACT EMPLOYEES see EMPLOYEE, CONTRACT EMPLOYEE | |
| CONTROLLER | |
| Transfer of funds, Charter Sec. 6.305 | 77-6 |
| "CONTRIBUTION" | |
| Defined. Municipal Election Campaign Contribution Control Ordinance | 77-38 |
| CRIMINAL ACTION | |
| Reward for witness | 77-31 |
| DEATH BENEFITS | |
| Retirement Board determination | 77-16 |
| DEFINITIONS | |
| Amendment, constitutional | 77-12 |
| Legitimate objective | 77-56 |
| Misconduct, official | 77-11 |
| Moral turpitude | 77-11 |
| Officer | 77-41 |
| Official misconduct | 77-11 |
| Payroll expense | 77-10 |
| Police Department, Employee | |
| Position | 77-40 |
| Rank | 77-40 |
| Political contribution | 77-38 |



| | |
|--|-------|
| DEFINITIONS (continued) | |
| Political loan | 77-38 |
| Political payment | 77-38 |
| Prevailing rate | 77-33 |
| Public use | 77-56 |
| Transient occupancy tax | 77-27 |
| DEPARTMENT OF CITY PLANNING see CITY PLANNING DEPARTMENT OF | |
| DEPARTMENT OF SOCIAL SERVICES see SOCIAL SERVICES, DEPARTMENT OF | |
| DESTRUCTIVE DEVICES | |
| Control preempted by state | 77-20 |
| DIAMOND HEIGHTS REDEVELOPMENT PROJECT | |
| Building permit applications, review by City Planning Commission | 77-30 |
| DISABILITY BENEFITS | |
| Retirement Board determination | 77-16 |
| DISTRICT ATTORNEY | |
| Election and term of office, Propositions A and B, Election of August 2, 1977 | 77-12 |
| Reward for witness in criminal action | 77-31 |
| DISTRICT ELECTIONS | |
| Board of Supervisors, Propositions A and B, Election of August 2, 1977 | 77-12 |
| DUE PROCESS | |
| Park property, right to use | 77-56 |
| Retirement Board determination disability or death benefits | 77-16 |
| EDUCATION, BOARD OF | |
| Paraprofessionals, retroactive reclassification | 77-50 |
| Members, Election and term of office, Propositions A and B, Election of August 2, 1977 | 77-12 |
| Members, residence requirements | 77-4 |



| | |
|--|-------|
| ELECTED OFFICIAL | |
| Conviction, crime of moral turpitude, immediate removal | 77-11 |
| Official misconduct | 77-11 |
| Suspension and removal procedure | 77-11 |
| ELECTIVE OFFICE | |
| Residence requirements | 77-4 |
| ELECTORATE | |
| Majority voter approval for lease financing | 77-27 |
| Two-thirds vote requirement to encumber future revenue | 77-27 |
| EMPLOYEE, CIVIL SERVICE ELIGIBLES | |
| Examination announcement qualifications, variation | 77-40 |
| Political contribution to election campaigns | 77-24 |
| EMPLOYEE, CIVIL SERVICE EMPLOYEE | |
| Average maximum wage | 77-33 |
| Compensation, retroactive | 77-50 |
| Conflict of interest, Charter Sec. 8.105g | 77-18 |
| Conflict of interest, Civil Service Commission Rule 29.03 | 77-18 |
| Conflict of interest. Child welfare worker to operate home care facility | 77-18 |
| Contract employees may be justified | 77-3 |
| Emergency appointment authorized | 77-22 |
| Graduated wage schedules | 77-23 |
| Hatch Act | 77-42 |
| Leave of absence. Status of employee | 77-49 |
| Like work--like pay appointments, Fire Department | 77-51 |
| Limited tenure appointment authorized | 77-22 |
| Limited tenure appointment, procedure | 77-22 |
| Overtime for employee on 35 hour week | 77-34 |
| Overtime. Salary Standardization Ordinance, 1976-77 | 77-34 |



| | |
|--|-------|
| EMPLOYEE, CIVIL SERVICE EMPLOYEE (continued) | |
| Payroll records are public records | 77-19 |
| Personnel records, public access to | 77-19 |
| Political activity | 77-9 |
| Political contributions to election campaigns | 77-24 |
| Principal employment | 77-42 |
| Privacy of personnel data | 77-19 |
| Promotion in the service whenever practicable | 77-21 |
| Reclassification | 77-50 |
| Registers of eligibles | 77-22 |
| Salary. Supervisorial adjustment, eligibility | 77-39 |
| Salary. Supervisorial adjustment, overtime pay | 77-39 |
| Salary. Supervisorial adjustment, premium pay | 77-39 |
| Salary. Supervisorial adjustment, reconsideration | 77-39 |
| Salary. Supervisorial adjustment, straight time | 77-39 |
| Supervisorial salary adjustment | 77-39 |
| Unit determination appeal | 77-43 |
| Workweek variations | 77-39 |
| Working hours. Attendance employee members at Retirement Board and Health Service Board meetings | 77-26 |
| EMPLOYEE, CIVIL SERVICE EMPLOYEE ORGANIZATIONS | |
| Political activity | 77-9 |
| EMPLOYEE, CONTRACT EMPLOYEE | |
| Civil Service employees cannot provide services | 77-3 |
| Services justified by special circumstances | 77-3 |
| EMPLOYEE, MUNICIPAL RAILWAY | |
| Graduated pay scales | 77-23 |
| Payroll open to public inspection | 77-19 |
| Personnel records confidentiality | 77-19 |
| Salary setting, Transportation Promotive Series | 77-52 |
| Transit operators | 77-23 |
| Wage schedules | 77-23 |



| | |
|---|-------|
| EMPLOYEE, NON-CIVIL SERVICE | |
| Appointment authorized | 77-22 |
| Appointment procedure | 77-22 |
| EMPLOYEE, PARAPROFESSIONAL | |
| Retroactive salary schedule | 77-50 |
| EMPLOYEE RELATIONS DIRECTOR | |
| Power to make unit determination | 77-43 |
| EMPLOYEE RELATIONS ORDINANCE see | |
| ADMINISTRATIVE CODE SECS 16.200-16.222 | |
| EMPLOYEE RELATIONS DIVISION | |
| Grievance Procedure. Civil Service Commission Rule 34 | 77-44 |
| Meyers-Miliias-Brown Act, duty to implement. Administrative Code Sec 16.203(a) | 77-43 |
| EQUAL PROTECTION | |
| Tax inequalities | 77-35 |
| EXAMINATIONS see CIVIL SERVICE EXAMINATIONS | |
| EXECUTIVE SESSION | |
| Notice to public. Ralph M. Brown Act | 77-17 |
| Press and public may be excluded if properly called | 77-1 |
| Ralph M. Brown Act not applicable if properly called | 77-1 |
| EXECUTIVE SESSION. AGENDA | |
| Notice to public under Ralph M. Brown Act | 77-17 |
| FAIR HEARING | |
| Elements of | 77-16 |
| Retirement Board determination disability or death benefits | 77-16 |
| FAIR POLITICAL PRACTICES ACT see POLITICAL REFORM ACT OF 1974, GOVERNMENT CODE SECS 81000-91014 | |
| FAIR POLITICAL PRACTICES COMMISSION | |
| "Political contribution" defined | 77-38 |
| FARRELL, JOHN C., CONTROLLER, ADDRESSEE | |
| Transfer of funds. Charter Sec. 6.305 | 77-6 |
| FEDERAL AVIATION ADMINISTRATION | |
| Airport Expansion program. EIS | 77-55 |
| FINANCING PUBLIC IMPROVEMENTS | |
| Methods | 77-27 |



| | |
|--|-------|
| FIRE COMMISSION | |
| Like work--like pay appointments | 77-51 |
| Members; selection, term of office, Proposition B, Election of August 2, 1977 | 77-12 |
| FIRE DEPARTMENT | |
| Motion picture theatres. Permit requirements | 77-7 |
| Permit requirements for multiple motion picture theatres | 77-7 |
| FIRE DEPARTMENT. EMPLOYEE | |
| Chief. Power to appoint Secretary to Chief | 77-51 |
| Election of firefighter to Board of Supervisors. Incompatible offices | 77-49 |
| Like work--like pay appointment | 77-51 |
| Retirement allowances | 77-13 |
| Secretary to Chief. Exempt Civil Service rank | 77-51 |
| Wage schedules under negotiation at time of certification | 77-33 |
| FIREARM AMMUNITION | |
| State preemption | 77-20 |
| FOSTER CARE PROGRAM | |
| Role of placement worker | 77-18 |
| FOUR SEAS INVESTMENT CORPORATION | |
| International Hotel. Contempt judgment, Sheriff | 77-11 |
| FUNDS, TRANSFER OF | |
| Controller duties, Charter Sec. 6.305 | 77-6 |
| GAIN, CHARLES R., CHIEF, POLICE DEPARTMENT, ADDRESSEE | |
| Power to make non-civil service or limited tenure appointments | 77-22 |
| Q-3 Police Officer. Creation of new position | 77-40 |
| Service in another rank | 77-45 |
| GENERAL HOSPITAL see SAN FRANCISCO GENERAL HOSPITAL | |
| GRADUATED PAY SCALES | |
| Civil Service employees | 77-23 |
| GRIEVANCE PROCEDURE | |
| Civil Service Commission Rule 34. Scope and application | 77-44 |
| "GROSS RECEIPTS" TAX (ORDINANCE 245-68) see also PAYROLL EXPENSE TAX (ORDINANCE 275-70) | |



HATCH ACT see 5 USCA Secs. 1501-1508, 1974 AMENDMENTS,
PUB. L. 93-443, TITLE IV SEC. 401

HATCH ACT

| | |
|---|-------|
| Elected official, application | 77-42 |
| Federal funds. Prinicipal employment | 77-42 |
| Local employee | 77-42 |
| Local officer | 77-42 |
| Non-elective state or local officer or employee | 77-42 |
| State employee, non-elective | 77-42 |
| State officer, non-elective | 77-42 |

HEALTH SERVICE BOARD

| | |
|--|-------|
| Employee members attendance meetings during working hours | 77-26 |
|--|-------|

HONGISTO, RICHARD D. SHERIFF

| | |
|---------------------------------------|-------|
| Contempt judgment. Legal consequences | 77-11 |
|---------------------------------------|-------|

HOTEL ROOM TAX FUND

| | |
|--|-------|
| Allocation of funds. Municipal Code, Part III, Sec. 515 | 77-27 |
|--|-------|

HOTEL TAX see TRANSIENT OCCUPANCY TAX

HOUSING AUTHORITY

| | |
|---|-------|
| Community development funds | 77-27 |
| Duties under Health and Safety Code, Sec. 34322 | 77-27 |
| International Hotel. Acquisition and rehabilitation | 77-27 |
| Power to establish tenant preference system | 77-27 |

HOUSING AUTHORITY TENANTS

| | |
|-------------------|-------|
| Preference system | 77-27 |
|-------------------|-------|

INCOMPATIBLE OFFICES

| | |
|--------------------------------|-------|
| Common law doctrine | 77-49 |
| Firefighter and supervisor | 77-49 |
| Leave of absence does not cure | 77-49 |
| Supervisor and firefighter | 77-49 |

INITIATIVE CHARTER AMENDMENTS

| | |
|---------------------------------------|-------|
| Conflict in provisions, two on ballot | 77-12 |
|---------------------------------------|-------|



| | |
|---|-------|
| INTERNATIONAL HOTEL | |
| Contempt judgment, Sheriff. Failure to evict tenants | 77-11 |
| Four Seas Investment Corp. | 77-11 |
| Funding for acquisition and rehabilitation by Housing Authority | 77-27 |
| Priority of current tenants if acquired by Housing Authority | 77-27 |
| KOPP, QUENTIN, PRESIDENT, BOARD OF SUPERVISORS, ADDRESSEE | |
| Campaign contribution to multiple measure committee | 77-29 |
| Civil Service Employees, political activity, Charter Sec. 8.311 | 77-9 |
| Civil Service Employees, political activity, Charter Sec. 8.311 | 77-24 |
| Hatch Act | 77-42 |
| Residence requirements, Board of Education | 77-4 |
| Retirement Board members excused from voting | 77-16 |
| LAGARDA, LIDIA M., Commissioner, Recreation and Park Department, ADDRESSEE, Commission, Executive session | 77-17 |
| LAWYER-CLIENT PRIVILEGE | |
| Exception to Ralph M. Brown Act | 77-17 |
| LEASE FINANCING | |
| Financing public improvements | 77-27 |
| Majority voter approval required. Charter Sec. 7.309 | 77-27 |
| LEGISLATIVE INTENT | |
| General rule | 77-21 |
| "LEGITIMATE OBJECTIVE" | |
| Defined. Private lease--park property | 77-56 |
| LEVITIN, JERROLD E., COMMISSIONER, MUNICIPAL COURT, ADDRESSEE | |
| Residential permit parking | 77-37 |
| LIBRARY COMMISSION | |
| Members: Selection, terms of office, Proposition B, Election of August 2, 1977 | 77-12 |



LIST see CIVIL SERVICE LISTS

"L OAN "

Defined. Municipal Election Campaign Contribution
Control Ordinance 77-38

LOCAL ADVISORY BOARD

Member is neither officer nor employee. Charter
Sec. 1.103 77-41

Residence requirements 77-41

MAHLER, PATRICK J., DIRECTOR, EMPLOYEE RELATIONS
DIVISION, ADDRESSEE

Graduated pay scales, Municipal Railway Operators 77-23

Grievance procedure, Civil Service Rule 34 77-44

Unit determinations 77-43

MARKS-FORAN RESIDENTIAL REHABILITATION ACT OF 1973 see
HEALTH AND SAFETY CODE SECS. 37910-37964

MATHER FAMILY CAMP

Fees and charges 77-54

MAYOR

Discretion to remove or suspend elected official,
official misconduct 77-11

Election and term of office. Propositions A & B,
Election of August 2, 1977 77-12

Failure to remove elected official convicted
of crime of moral turpitude is 'official misconduct' 77-11

Mandatory duty to remove elected official upon
conviction of crime of moral turpitude 77-11

Official misconduct. Charter Sec. 8.107 77-11

Power of appointment to Boards and Commissions 77-25

Power to fix wages for employees of City and County 77-2

Power to provide reward for witness in criminal
action 77-31

Procedure for removal of elected official for
official misconduct 77-11

Signature establishes date of reclassified
positions 77-50

MAZZOLA, JOSEPH P.

"Official misconduct" defined 77-11



| | |
|---|-------|
| MEET AND CONFER | |
| Charter Sec. 8.407. No conflict | 77-2 |
| MEETINGS | |
| Executive sessions | 77-1 |
| Open sessions | 77-1 |
| MENDELSON, ROBERT H., BOARD OF SUPERVISORS, ADDRESSEE | |
| Residential permit parking, city wide permits | 77-32 |
| MEYERS-MILIAS-BROWN ACT see GOVERNMENT CODE SEC. | |
| 3500-3510 | |
| MEYERS-MILIAS-BROWN ACT | |
| Board of Supervisors must approve memorandum of understanding | 77-49 |
| Employee organizational rights | 77-43 |
| Employee Relations Division duty to implement. Administrative Code Sec. 16.203(a) | 77-43 |
| Local charter provisions not superseded | 77-2 |
| "Meet and confer" with recognized employee organizations | 77-2 |
| "MISCONDUCT, OFFICIAL" | |
| Defined and effect of finding upon elected official | 77-11 |
| MOLINARI, JOHN L., BOARD OF SUPERVISORS, ADDRESSEE | |
| Overtime for employee working 35 hour week | 77-34 |
| Political contribution, loan defined | 77-38 |
| "MORAL TURPITUDE" | |
| Defined and effect of finding upon elected official | 77-11 |
| MOSCONE, GEORGE R., MAYOR, ADDRESSEE | |
| Consular property tax exemption | 77-28 |
| International Hotel. Purchase, rehabilitation and occupancy | 77-27 |
| News coverage of Retirement Board meetings | 77-1 |
| Reward for witness in criminal action | 77-31 |
| Wage surveys | 77-2 |



| | |
|--|-------|
| MOTION PICTURE THEATRES | |
| Fire Department permits for multiple theatres | 77-7 |
| MUNI see MUNICIPAL RAILWAY | |
| MUNI EMPLOYEES see EMPLOYEES, MUNICIPAL RAILWAY | |
| MUNICIPAL ELECTION CAMPAIGN CONTRIBUTION CONTROL ORDINANCE | |
| see ADMINISTRATIVE CODE, ARTICLE 12 (SECS. 16.501 | |
| THRU 16.519) | |
| MUNICIPAL EMPLOYEES RELATIONS PANEL | |
| Civil Service Commission successor to powers | |
| and duties | 77-43 |
| MUNICIPAL RAILWAY | |
| Payrolls open to public inspection | 77-19 |
| Personnel records confidentiality | 77-19 |
| NATIONAL ENVIRONMENTAL POLICY ACT | |
| Airport Expansion program. EIS | 77-55 |
| NEW ZEALAND | |
| Tax status of real property leased for Consular | |
| office | 77-14 |
| NEWS COVERAGE | |
| Retirement Board meetings | 77-1 |
| NON-RESIDENCE see also COMMUTER, RESIDENCE | |
| NON-RESIDENCE | |
| Exclusion from municipal recreational facilities | 77-54 |
| Financial preference to residents | 77-54 |
| Right to classify on basis residence includes | |
| right to exclude non-residents | 77-54 |
| "OFFICER" | |
| Defined. Charter Sec. 1.103 | 77-41 |
| OFFICER, ELECTED | |
| Hatch Act | 77-42 |
| OFFICER, NON-ELECTIVE | |
| Hatch Act | 77-42 |
| "OFFICIAL MISCONDUCT" | |
| Defined | 77-11 |
| Procedure for removal of elected official | 77-11 |



| | |
|--|-------|
| PERMIT APPEALS, BOARD OF (con't) | |
| Powers and duties Charter Sec. 3.651 | 78-28 |
| 3033-3035 Judah Street | 78-51 |
| PIER 39 | |
| see | |
| NORTHPOINT PIER DEVELOPMENT | 78-21 |
| PLACE OF ENTERTAINMENT | |
| Permit procedure | 78-15 |
| PLANNING AND ZONING LAW | |
| Charter city--applies only to extent that adopted by Charter or Ordinance | 78-68 |
| POLICE COMMISSION | |
| Memorandum of understanding | 78-11 |
| Personnel records privacy | 78-11 |
| POLICE DEPARTMENT | |
| General Order No. 9 dated Feb. 9, 1976 | 78-11 |
| Memorandum of Understanding, 1971, Sec. 28 | 78-11 |
| Memorandum of understanding, 1974 | 78-11 |
| Noise ordinance enforcement. Vehicles and general noise regulations | 78-66 |
| Personnel records privacy | 78-11 |
| Police officer's Bill of Rights--Sec. 2, 1974 | |
| Memorandum of understanding | 78-11 |
| POLICE DEPARTMENT EMPLOYEE | |
| Appointments--discretion of Chief of Police | 78-57 |
| Assignment of duties--discretion of Chief of Police | 78-57 |
| Bureau of Inspectors | 78-57 |
| Civil Service ranks | 78-57 |
| Death benefit--effective date | 78-63 |
| Dual rank holding | 78-57 |
| Exempt civil service ranks | 78-57 |
| Personnel records, privacy | 78-11 |
| Police communication dispatcher--rotating shift assignment | 78-95 |
| Post retirement death benefit increase cannot be limited to retirees | 78-9 |



| | |
|--|-------|
| OKAMOTO, RAI Y., DIRECTOR, CITY PLANNING, ADDRESSEE | |
| Airport control tower, Application of CEQA | 77-55 |
| Rent control for RAP areas | 77-46 |
| ORDINANCE | |
| Cannot limit effect of Charter | 77-15 |
| OVERTIME | |
| Employee working 35 hour week | 77-34 |
| PARK PROPERTY | |
| Private use | 77-56 |
| Private lease, rental fee | 77-56 |
| PARKING, RESIDENTIAL PERMIT | |
| Constitutionality | 77-37 |
| Permits city-wide | 77-32 |
| PAROLE COMMISSIONERS, BOARD OF | |
| Appointing authority for Executive Director and Assistant Secretary | 77-25 |
| Appointing officer of the Board | 77-25 |
| Distinguished from appointive or Charter Boards or Commissions | 77-25 |
| Staff appointments | 77-25 |
| "PAYMENT" | |
| Defined. Municipal Election Campaign Contribution Control Ordinance | 77-38 |
| "PAYROLL EXPENSE" | |
| Defined. Payroll Expense Tax Ordinance | 77-10 |
| PAYROLL EXPENSE TAX (ORDINANCE 275-70) see also | - |
| "GROSS RECEIPTS" TAX (ORDINANCE 245-68) | |
| PAYROLL EXPENSE TAX ORDINANCE | |
| Vacation and sick leave payments are compensation | 77-10 |
| PERMIT APPEALS, BOARD OF | |
| Members; selection, terms of office, Proposition B, Election of August 2, 1977 | 77-12 |
| PERSONNEL RECORDS | |
| City liability for release of | 77-19 |



POLICE COMMISSION

Bilingual police officer, creation of position 77-40

Members: selection, terms of office, Proposition
B, Election of August 2, 1977 77-12

Power to create position Q-3 bilingual 77-40

Reward for witness in criminal action 77-31

POLICE DEPARTMENT, EMPLOYEE

Appointment to another rank 77-45

Appointment to fill temporary vacancy in
promotive rank 77-22

Assistant inspector appointed Sergeant 77-45

Bilingual skills 77-40

Bureau of Inspectors 77-45

Eligible lists, preferential appointments 77-40

"Position" defined 77-40

Probation 77-45

Promotions 77-45

Q-2 Police Officer 77-40

Q-3 Police Officer, bilingual skills 77-40

"Rank" defined 77-40

Retirement allowances 77-13

Seniority 77-45

Sergeant appointed Assistant Inspector 77-45

Service in another rank 77-45

Wage schedules under negotiation at time of
certification 77-33

POLICE POWER

Regulation to prevent congestion in municipal
plunge 77-54

POLITICAL ACTIVITY

Civil Service Employees 77-9

Civil Service employees or eligibles 77-24



| | |
|---|-------|
| POLITICAL ACTIVITY (continued) | |
| Premises of local agency, Board of Supervisors has power to regulate | 77-9 |
| Working hours, Board of Supervisors has power to regulate | 77-9 |
| POLITICAL ACTIVITY, NON-PARTISAN | |
| Hatch Act | 77-42 |
| POLITICAL ACTIVITY, PARTISAN | |
| Hatch Act | 77-42 |
| POLITICAL CONTRIBUTION | |
| Civil Service employees or eligibles | 77-24 |
| "Contribution" defined. Municipal Election Campaign Contribution Control Ordinance | 77-38 |
| "Loan" defined. Municipal Election Campaign Contribution Control Ordinance | 77-38 |
| "Payment" defined. Municipal Election Campaign Contribution Control Ordinance | 77-38 |
| POLITICAL REFORM ACT OF 1974--FAIR POLITICAL PRACTICES ACT see GOVERNMENT CODE SECS. 81000-91014 | |
| PORT COMMISSION | |
| Members: selection, term of office, Proposition B, Election of August 2, 1977 | 77-12 |
| PREEMPTION, STATE | |
| Ammunition for firearms | 77-20 |
| Test of preemption | 77-20 |
| PRESS COVERAGE OF MEETINGS | |
| Retirement Board | 77-1 |
| PREVAILING RATE | |
| Charter Sec. 8.407 | 77-52 |
| Defined and application | 77-33 |
| Determination | 77-2 |
| Liberally construed | 77-8 |
| Transportation promotive series | 77-52 |
| Wage schedules under negotiation at time of certification | 77-33 |
| Wage survey. Effective date of rates | 77-8 |



| | |
|---|-------|
| PREVAILING RATE. PRIVATE EMPLOYERS | |
| Effective date of rates | 77-8 |
| PREVAILING RATE. PUBLIC EMPLOYERS | |
| Effective date of rates | 77-8 |
| PREVAILING WAGE see PREVAILING RATE | |
| PRIVACY | |
| Constitutional right | 77-19 |
| Municipal Railway personnel records | 77-19 |
| "Invasion of privacy" Penal Code Sec. 630-637.2 | 77-19 |
| Personnel records | 77-19 |
| PRIVATE USE | |
| Park property | 77-56 |
| PROBATION OFFICER, ADULT | |
| Member, County Board of Parole Commissioners | 77-25 |
| PROPERTY TAX | |
| Common law distinction: owned and leased property | 77-28 |
| Consular office lease, New Zealand | 77-14 |
| Consular office lease, Ireland | 77-28 |
| Real property leased for consular office, Ireland | 77-28 |
| Real property leased for consular office, New Zealand | 77-14 |
| PROPOSITION "A", ELECTION, AUGUST 2, 1977 | 77-12 |
| PROPOSITION "B", ELECTION, AUGUST 2, 1977 | 77-12 |
| PROPOSITION "G", ELECTION, NOVEMBER, 1967 | 77-52 |
| PROPOSITION "G", ELECTION, NOVEMBER, 1968 MISTYPED, SHOULD READ NOVEMBER, 1967 | 77-52 |
| PROPOSITION "M", ELECTION, NOVEMBER 5, 1974 | 77-13 |
| PROPOSITION "P", ELECTION, NOVEMBER 2, 1976 | 77-15 |
| PROPOSITIONS, CONFLICTING | |
| Effect if voters approve both | 77-12 |
| PUBLIC DEFENDER | |
| Election, term of office, Propositions A and B, Election of August 2, 1977 | 77-12 |



| | |
|---|-------|
| PUBLIC EMPLOYEE | |
| Liability for injury caused by adopting an enactment or failing to enforce any law | 77-19 |
| PUBLIC ENTITY | |
| Liability for injury caused by adopting an enactment or failing to enforce any law | 77-19 |
| PUBLIC HEALTH, DEPARTMENT OF | |
| Community mental health services | 77-3 |
| Contract employees or civil service employees | 77-3 |
| Contract for expanded psychiatric services from UC School of Medicine | 77-3 |
| Staff for in-patient psychiatric unit at San Francisco General Hospital | 77-3 |
| PUBLIC IMPROVEMENTS, FINANCING | |
| Methods | 77-27 |
| PUBLIC RECORDS | |
| Official files and records, Assessment Appeals Board | 77-36 |
| Payroll records | 77-19 |
| PUBLIC RECORDS ACT see GOVERNMENT CODE, SECS. 6250-6261 | |
| PUBLIC RECORDS ACT | |
| Assessment Appeals Board, official and personal files | 77-36 |
| Personal files, exception | 77-36 |
| Personnel files, express exception | 77-19 |
| Trade secrets, exception | 77-36 |
| "PUBLIC USE" | |
| Defined. Private use, park property | 77-56 |
| PUBLIC UTILITIES COMMISSION | |
| Municipal Railway personnel records, confidentiality | 77-19 |
| Members: selection, terms of office. Proposition B, Election of August 2, 1977 | 77-12 |
| RALPH M. BROWN ACT see GOVERNMENT CODE SECS. 54950-54961 | |



| | |
|---|-------|
| RALPH M. BROWN ACT | |
| Board of Supervisors Committee meetings | 77-48 |
| Exceptions to public meetings | 77-17 |
| Prime purpose | 77-17 |
| Recreation and Park Commission, legality of executive session | 77-17 |
| Retirement Board meetings, news coverage | 77-1 |
| RAP AREAS | |
| Rent control area wide | 77-46 |
| Selection | 77-46 |
| RECLASSIFICATION | |
| Building permit applications during | 77-53 |
| RECREATION AND PARK COMMISSION | |
| Executive session, Ralph M. Brown Act | 77-17 |
| Members: selection, term of office, Proposition B, Election of August 2, 1977 | 77-12 |
| Power to approve private club by-laws, policies, fees, dues, lease of park property | 77-56 |
| RECREATION AND PARK COMMISSION | |
| Power to classify users of facilities on basis of residence | 77-54 |
| Power to impose reasonable admission fees | 77-54 |
| Power to limit number of persons using swimming areas | 77-54 |
| Power to make rules and regulations for park properties | 77-54 |
| Power to set rental fee, private lease | 77-56 |
| RECREATION FACILITIES | |
| Resident and non-resident access | 77-54 |
| REDEVELOPMENT AGENCY | |
| Board of Supervisors, cooperation agreement | 77-30 |
| Powers and functions | 77-30 |
| Redevelopment Plan, responsibilities | 77-30 |

| | |
|---|-------|
| REDEVELOPMENT PLAN | |
| City Planning Commission, discretionary action | 77-30 |
| Redevelopment Agency, powers and functions | 77-30 |
| REDEVELOPMENT PROJECT AREAS | |
| Diamond Heights | 77-30 |
| RENT CONTROL | |
| RAP areas | 77-46 |
| RESIDENCE see also COMMUTER, NON-RESIDENCE | |
| RESIDENCE | |
| Congested parking | 77-32 |
| Congested parking | 77-37 |
| Motor vehicles | 77-32 |
| Motor vehicles | 77-37 |
| Rehabilitation, RAP areas | 77-46 |
| Rent control, RAP areas | 77-46 |
| Right to classify on basis residence includes right to exclude non-residents | 77-54 |
| RESIDENCE REQUIREMENTS | |
| Appointive office | 77-4 |
| Boards and Commissions, Appointive | 77-4 |
| Boards and Commissions, Charter | 77-4 |
| Boards and Commissions, Charter | 77-41 |
| Boards and Commissions, Statutory | 77-41 |
| Child Health and Disability Prevention Program, Local Advisory Board | 77-41 |
| Education, Board of | 77-4 |
| Elective office | 77-4 |
| Supervisors powerless to waive for Charter boards and commissions | 77-41 |



| | |
|--|-------|
| RESIDENTIAL PERMIT PARKING | |
| Constitutionality | 77-32 |
| Constitutionality | 77-37 |
| Neighborhood considerations | 77-32 |
| Neighborhood considerations | 77-37 |
| Permits, city wide | 77-32 |
| Permits, city wide | 77-37 |
| Reasons for | 77-32 |
| Reasons for | 77-37 |
| RESIDENTIAL PERMIT PARKING ORDINANCE see TRAFFIC CODE, ART. 15 | |
| RESIDENTIAL REHABILITATION ASSISTANCE AREAS see RAP | |
| RETIREMENT ALLOWANCE | |
| Fire and Police Department members who retired 7/2/75 to 10/14/76 | 77-13 |
| Liberally construed | 77-13 |
| Police and Fire Department members who retired 7/2/75 to 10/14/76 | 77-13 |
| Salary levels vary within a fiscal year | 77-13 |
| RETIREMENT BOARD MEETINGS | |
| Attendance of employee members during working hours | 77-26 |
| Executive sessions and open sessions | 77-1 |
| Executive session properly called not subject to Ralph M. Brown Act | 77-1 |
| Executive session to confer with counsel | 77-1 |
| Executive session to consider appointment, employment or dismissal of a public employee | 77-1 |
| Executive session to consider complaints or charges against a public employee | 77-1 |
| News coverage | 77-1 |
| Open and public except for properly called executive sessions | 77-1 |
| Ralph M. Brown Act applies | 77-1 |



RETIREMENT BOARD

| | |
|--|-------|
| Member excused from voting because of bias | 77-16 |
| Power of Chairman or witness to limit news coverage of meeting | 77-1 |
| Power to adopt reasonable rules and regulations for meetings, Charter Sec. 3.500 | 77-1 |
| Power to take reasonable and necessary actions to maintain order at meetings. Government Code Sec. 54957.9 | 77-1 |
| Quasi-judicial action. Disability or death benefits | 77-16 |

REVENUE BONDS

| | |
|---|-------|
| Airport revenue bonds issued pursuant to Charter Sec. 7.306 | 77-15 |
|---|-------|

REWARD

| | |
|----------------------------|-------|
| Witness in criminal action | 77-31 |
|----------------------------|-------|

ROWING CLUBS

| | |
|---------------------|-------|
| Aquatic Park leases | 77-56 |
|---------------------|-------|

SALARY

| | |
|--|-------|
| Payroll expense tax ordinance. Vacation and sick leave payments are compensation | 77-10 |
| Retroactive payment | 77-50 |

SALARY SCHEDULE

| | |
|---|-------|
| Averaging process | 77-23 |
| Graduated pay scales, Firefighters | 77-23 |
| Graduated pay scales, Miscellaneous employees | 77-23 |
| Graduated pay scales, Policemen | 77-23 |
| Retroactive appointment, paraprofessionals | 77-50 |
| Salary levels vary within fiscal year | 77-13 |
| Supervisory adjustment | 77-39 |

SALARY SURVEY see WAGE SURVEY

| | |
|---|------|
| SALOMON, DARRELL, CIVIL SERVICE COMMISSION, ADDRESSEE Survey of data in private industry, Charter Sec. 8.407 | 77-5 |
|---|------|

| | |
|---|------|
| SAN FRANCISCO GENERAL HOSPITAL Psychiatric Unit services | 77-3 |
|---|------|



| | |
|---|-------|
| SAN FRANCISCO TOMORROW Control tower, San Francisco International Airport, CEQA application | 77-55 |
| SCANNELL, PAUL T., SENIOR PERSONNEL OFFICER, S.F. GENERAL HOSPITAL, ADDRESSEE Psychiatric Unit services | 77-3 |
| SHERIFF Budget includes Parole Commission positions | 77-25 |
| Contempt judgment, legal consequences | 77-11 |
| Election, term of office, Propositions A and B, Election of August 2, 1977 | 77-12 |
| Member of County Board of Parole Commissioners | 77-25 |
| SARSFIELD, EDWIN, GENERAL MANAGER, DEPT OF SOCIAL SERVICES, ADDRESSEE Conflict of interest. Child placement worker operating home care facility | 77-18 |
| SOCIAL SERVICES COMMISSION Members: selection, terms of office. Proposition B, Election of August 2, 1977 | 77-12 |
| SOCIAL SERVICES, DEPARTMENT OF Child placement worker to operate home care facility. Conflict of interest | 77-18 |
| SPRING, JOHN C., GENERAL MANAGER, RECREATION AND PARK DEPARTMENT, ADDRESSEE MISTYPED, should read John J. Spring Mather Family Camp Fees and Charges | 77-54 |
| SPRING, JOHN J., GENERAL MANAGER, RECREATION & PARK COMMISSION, ADDRESSEE Aquatic Park. Rowing Club leases | 77-56 |
| Mather Family Camp. Fees and charges | 77-54 |
| STATE LANDS COMMISSION Private lease of land granted by state for aquatic park | 77-56 |
| STATUTORY CONSTRUCTION General rule | 77-21 |
| STEELE, R. SPENCER, ZONING ADMINISTRATOR, CITY PLANNING, ADDRESSEE City Planning Commission, review building permit applications within redevelopment project area | 77-30 |
| Building permit applications during reclassi- fication and code text amendment | 77-30 |



SUPERVISORIAL SALARY ADJUSTMENT

| | |
|--|-------|
| Eligibility | 77-39 |
| SUPERVISORS, BOARD OF | |
| Airport Expansion program, EIR | 77-55 |
| Airport revenue bonds, no financial responsibility mandate | 77-15 |
| Appropriation ordinance creates civil service positions. Charter Sec. 8.200 | 77-25 |
| Average maximum wage. Duty to determine | 77-33 |
| Committee meetings outside City Hall | 77-48 |
| Committee meetings subject to Ralph M. Brown Act | 77-48 |
| Community development funds, agreement with Housing Authority | 77-27 |
| Discretion in removal of elected official for official misconduct | 77-11 |
| Discretion in setting salaries for Transportation Promotive Series, Charter Sec. 8.407 | 77-52 |
| Discretion re wage rates and form of increase | 77-52 |
| District Elections. Propositions A and B, Election of August 2, 1977 | 77-12 |
| Election and term of office. Propositions A and B, Election of August 2, 1977 | 77-12 |
| Election of firefighter to Board of Supervisors. Incompatible offices | 77-49 |
| Incompatible offices, firefighter and Supervisor | 77-49 |
| Overtime. Salary Standardization Ordinance, 1975-1976 | 77-34 |
| Overtime. Salary Standardization Ordinance, 1976-1977 | 77-34 |
| Power to allocate funds from Transient occupancy tax | 77-27 |
| Power to approve memorandum of understanding. Government Code Sec. 3505.1 | 77-49 |
| Power to consider wage schedules under negotiation at time of certification | 77-33 |



SUPERVISORS, BOARD OF (continued)

| | |
|--|-------|
| Power to create Boards and Commissions | 77-41 |
| Power to create or abolish City and County positions | 77-25 |
| Power to create position, only by appropriation ordinance | 77-50 |
| Power to create positions in any office, agency or department of the City and County, by appropriation ordinance | 77-25 |
| Power to enact ordinance prohibiting possession of wild animals | 77-47 |
| Power to encumber general funds | 77-27 |
| Power to establish parking restrictions in residential preferential parking areas | 77-32 |
| Power to establish rent control in RAP areas | 77-46 |
| Power to regulate political activities during working hours | 77-9 |
| Power to regulate political activities on premises of local agency | 77-9 |
| Powerless to waive residency requirements for Charter boards and commissions | 77-41 |
| Powers enumerated | 77-49 |
| Procedure for removal of elected official, official misconduct | 77-11 |
| Redevelopment Agency, cooperation agreement | 77-30 |
| Redevelopment Plan, adoption | 77-30 |
| Residential parking permits, city-wide | 77-32 |
| Residential permit parking, legislative basis | 77-37 |
| Retirement allowances of firemen and policemen | 77-13 |
| Salaried office | 77-49 |
| Salary ordinance amended and appropriation ordinance enacted at same time | 77-50 |
| Supplemental appropriation ordinance and amended salary ordinance enacted at same time | 77-50 |
| Wage schedules for Municipal Railway employees | 77-23 |



| | |
|---|-------|
| TAXES, BUSINESS: see "GROSS RECEIPTS" TAX and PAYROLL EXPENSE TAX | |
| TAX, BUSINESS | |
| Exemption for small business | 77-35 |
| Inequalities | 77-35 |
| TAX, PROPERTY | |
| Real property leased by Ireland for consular offices | 77-28 |
| Real property leased by New Zealand for consular offices | 77-14 |
| TAX COLLECTOR | |
| Business tax collection | 77-35 |
| TENANTS | |
| Housing authority structures | 77-27 |
| TINNEY, JOSEPH E., ASSESSOR, ADDRESSEE | |
| Tax status, real property leased for consular office | 77-14 |
| TRADE SECRETS | |
| Public Records Act, exception | 77-36 |
| TRANSFER OF FUNDS | |
| Controller duties, Charter Sec. 6.305 | 77-6 |
| TRANSIENT OCCUPANCY TAX see S.F. MUNICIPAL CODE, PART III, SECS. 501-518 | |
| "TRANSIENT OCCUPANCY TAX" | |
| Defined. Collection and expenditure | 77-27 |
| Diversion of funds | 77-27 |
| TREASURER | |
| Election and term of office, Propositions A and B, Election of August 2, 1977 | 77-12 |
| U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT | |
| Community development funds | 77-27 |
| UNIVERSITY OF CALIFORNIA MEDICAL SCHOOL | |
| Services to San Francisco General Hospital, 1959 agreement | 77-3 |
| Services to San Francisco General Hospital, proposed expansion | 77-3 |
| UNIT DETERMINATION PROCESS | |
| Civil Service Commission | 77-43 |
| Employee Appeal | 77-43 |



| | |
|---|-------|
| UNIT DETERMINATION PROCESS | |
| Employee Relations Division | 77-43 |
| VAN BOURG, VICTOR | |
| Wage surveys, Charter Sec. 8.407 | 77-2 |
| WAGE SURVEY | |
| Civil Service Commission cannot conduct its own survey of private industry | 77-5 |
| Civil Service Commission, Charter Sec. 8.407 | 77-2 |
| Civil Service Commission, discretion | 77-5 |
| Civil Service Commission, use of two surveys for different classifications | 77-5 |
| Graduated pay scales for Municipal Railway employees | 77-23 |
| Graduated pay scales, firemen | 77-23 |
| Graduated pay scales, policemen | 77-23 |
| Prevailing rates, effective dates of rates | 77-8 |
| Wage schedules under negotiation at time of certification | 77-33 |
| WALSH, JOHN J., GENERAL MANAGER, PERSONNEL, CIVIL SERVICE COMMISSION, ADDRESSEE | |
| County Parole Commission, Appointing authority | 77-25 |
| Lists, promotional and entrance, priority | 77-21 |
| Salary, supervisory adjustments | 77-39 |
| Salary, Transportation Promotive Series | 77-52 |
| WENTZ, JOHN B., PUBLIC UTILITIES COMMISSION, ADDRESSEE | |
| Confidentiality of personnel data | 77-19 |
| WHITE, DANIEL J. | |
| Firefighter elected to Board of Supervisors, incompatible offices | 77-49 |
| WILD ANIMALS | |
| Municipal legislation authorized, Fish and Game Code Sec. 2156 | 77-47 |
| WITNESS | |
| Reward for witness in criminal action | 77-31 |



WOMEN

Member of Airports, Public Utilities and Port
Commission. Proposition B, Election of August 2,
1977 77-12

WORKING CONDITIONS

Work week
Variation, supervisor and subordinate 77-39

Working hours
Attendance of employee members at meetings of
Health Service and Retirement Boards 77-26

ZONING

Building permit applications during code text
amendment and reclassification period 77-53

ZONING ADMINISTRATOR

Power to hear and determine variances during
reclassification period 77-53

Power to hear and determine variances during
code text amendment period 77-53

ZONING VARIANCE

Zoning administrator may hear and determine
during code text amendment and reclassification
period 77-53



3-3-3
Recreation and Park Department
What's Doing in the Parks

TUESDAY, MARCH 13 (con't)

11 a.m. - 5 p.m. -- San Francisco S.P.C.A. Mobile Adoption Program, Civic Center Plaza, Polk and McAllister Streets.

WEDNESDAY, MARCH 14

11 a.m. - 5 p.m. -- San Francisco S.P.C.A. Mobile Adoption Program, Civic Center Plaza, Polk and McAllister Streets; Justin Herman Plaza, Market and Steuart Streets.

3:30 - 4:30 p.m. -- Dramatics Class, ages 4 years and older, free, Presidio Heights Playground, Clay Street between Walnut and Laurel Sts.

4 - 9 p.m. -- Rec-Park Satellite Basketball, Kezar Pavillion, Stanyan and Waller Streets.

THURSDAY, MARCH 15

9:30 a.m. - 3 p.m. -- Adult Sewing Class, participants furnish their own supplies, machines and instructor available, free, Joseph Lee Recreation Center, Oakdale Avenue and Mendale Street.

11 a.m. - 5 p.m. -- San Francisco S.P.C.A. Mobile Adoption Program, Justin Herman Plaza, Market and Steuart Streets.

Noon - 1:30 p.m. -- Turk Murphy Jazz Band Concert, Union Square, Geary and Powell Streets.

FRIDAY, MARCH 16

3 - 6 p.m. -- University High Soccer, Kezar Stadium, Stanyan and Frederick Streets.

#####

10/10/20

SF

C47

3

SF City Attorney

no. 77-1

Letter Opinion No. 77-1

January 6, 1977

DOCUMENTS

SAN FRANCISCO
PUBLIC LIBRARY

Honorable George R. Moscone
Mayor of the City and County of San Francisco
200 City Hall
San Francisco, California 94102

Subject: Right of Retirement Board to Limit Radio and
Television News Coverage of Board Meetings.

Dear Mayor Moscone:

You asked my opinion on two questions relating to
television and radio news coverage of meetings of the San
Francisco Retirement Board, namely:

- "1. Does a Chairman of the San Francisco Retirement Board have the option to limit live, sound and action television news coverage of a meeting of that Board, and if so, what is the extent of such discretion?
- "2. Can a Chairman of the San Francisco Retirement Board or a witness appearing before said Board claim that its deliberations are 'quasi-judicial,' and therefore prevent television and radio from covering such a hearing?"

The same point was raised by a 1973 inquiry of
Dr. Washington E. Garner, then President of the Police
Commission. I am attaching hereto a copy of the reply
Letter Opinion (No. 73-49) for your reference as it is
equally applicable to your questions.



Honorable George R. Moscone

2

January 6, 1977

Briefly, the answer to your two questions is that the Retirement Board is empowered to adopt regulations (in accordance with Charter Section 3.500) and take such actions as are reasonable and necessary to maintain order at its meetings (California Government Code, Section 54957.9), to meet in executive session at such occasions as it may consider the appointment, employment or dismissal of a public employee or consider complaints or charges brought against a public employee by another (unless the employee charged or complained of requests a public hearing; Government Code, Section 54957). The Board may also meet in executive session to confer with its counsel concerning pending, future or anticipated litigation. (36 Ops. Atty. Gen. 175.) When properly meeting in executive session, the provisions of the Ralph M. Brown Act are not applicable and the press and the public may be excluded.

The San Francisco Retirement Board as a board of the City and County of San Francisco, is subject to the provisions of the Ralph M. Brown Act (Government Code, Sections 54950-54961), in the same manner as is the Police Commission, to which the attached Letter Opinion No. 73-49 was directed. As such, the Board's meetings must be open and public and all persons must be permitted to attend any meetings except those whose agendas qualify as proper subjects for consideration at an executive session, as indicated above. (Government Code, Section 54953.) Thus, agents and employees of radio and television news services may not be excluded from those meetings (or portions thereof) which do not qualify as executive sessions. Indeed, Government Code Section 54957.9, which provides for the clearing of a meeting room in the event of wilful disruption, specifically provides that:

" . . . Duly accredited representatives of the press or other news media, except those participating in the disturbance, shall be allowed to attend any session held pursuant to this section. . . . "

The above provision refers to a meeting which continues in session after the meeting room has been cleared as the result of a wilful interruption.



Honorable George R. Moscone

3

January 6, 1977

The Retirement Board does, as indicated above and in the attached opinion, have the right to prescribe reasonable rules and regulations for the conduct of its meetings. However, as the representatives of radio and television news media are engaged in the exercise of traditional First Amendment rights of speech, such rules and regulations as are applicable to them must be reasonable and necessary (Remer v City of El Cajon (1975) 52 Cal.App.3d 441, 125 Cal.Rptr. 116.) and may regulate only the time, place or manner of the exercise of their right of speech in such a way that any incidental restriction of that right is reasonably essential to the furtherance of an important or substantial governmental interest. (Young v. American Mini Theatres, Inc. (1976) _____ U.S. _____ [96 S.Ct. 2440, 49 L.Ed.2d 310]; United States v. O'Brien (1968) 391 U.S. 367 [88 S.Ct. 1673, 20 L.Ed.2d 672].)

The conduct of such public business with which the Retirement Board is charged by the Charter would constitute an important governmental interest such as would support regulations of such incidental matters as the placement of television or radio equipment or the establishment of "working areas" from which representatives of the media are barred during meetings (i.e., such areas as would interfere with the conduct of a meeting or hearing). However, the regulations cannot be such that effective news coverage of the Board's meetings is precluded.

In reference to your second question, it is immaterial whether the functions of the Retirement Board are described as "quasi-judicial". As stated above, the only portions of the Board's meeting or deliberations which may be conducted outside the presence of the public or the news media are those which qualify as executive sessions under the provisions of Sections 54957, 54957.1 or 54957.6 of the California Government Code or those meetings with the Board's legal counsel held solely to discuss litigation where public discussion would benefit an adversary of the City and County and would be a detriment to the general public. (36 Ops. Atty. Gen. 175.)

Very truly yours,

THOMAS M. O'CONNOR
City Attorney



SF
47
3
77-2

SF City Attorney

Letter Opinion No. 77-2

DOCUMENTS

January 11, 1977

FRANCISCO
PUBLIC LIBRARY

Honorable George R. Moscone
Mayor of San Francisco
200 City Hall
San Francisco, California 94102

Subject: Civil Service Commission Authority
Pursuant to Section 8.407 of the
Charter Regarding Wage Surveys

Dear Mayor Moscone:

This is in response to your recent oral request that I provide comment on Mr. Van Bourg's letter to you of December 28, 1976. Mr. Van Bourg's letter contains his legal analysis of how salary surveys, pursuant to the aforementioned Charter section, may be conducted.

Mr. Van Bourg concludes in the first paragraph of his letter that the Civil Service Commission can gather wage and salary information in an unrestricted fashion pursuant to the second paragraph of Charter Section 8.407. In reading said paragraph, I arrive at a different conclusion.

Specifically, the paragraph provides:

"The civil service commission shall conduct a comprehensive investigation and survey of basic pay rates and wages and salaries in other governmental jurisdictions and private employment for like work and like service, . . . solely in the manner hereinafter provided."

NOTES

On the subject of the human skeleton, the following notes are given: The human skeleton is composed of 206 bones, which are divided into the skull, the vertebral column, the rib cage, the pelvis, and the limbs. The skull is composed of the cranium and the facial bones. The vertebral column is composed of the cervical, thoracic, lumbar, and sacral vertebrae. The rib cage is composed of the ribs and the sternum. The pelvis is composed of the ilium, ischium, and pubis. The limbs are composed of the humerus, radius, ulna, carpals, metacarpals, and phalanges of the hand, and the femur, tibia, fibula, tarsals, metatarsals, and phalanges of the foot.

The human skeleton is the most important part of the human body, and it is the only part that remains after death. It is the skeleton that gives the body its shape and support. It is also the skeleton that protects the internal organs. The skull protects the brain, the vertebral column protects the spinal cord, and the rib cage protects the heart and lungs. The pelvis and the limbs are the parts of the skeleton that are most exposed to injury.

The human skeleton is a very complex structure, and it is made up of many different parts. Each part has a specific function, and they all work together to support the body and protect the internal organs. The skull is the most important part of the skeleton, and it is the only part that is made of bone. The rest of the skeleton is made of cartilage, which is a softer material than bone. The cartilage is made up of a network of fibers, and it is this network that gives the cartilage its strength and flexibility.

The human skeleton is a very interesting subject, and it is one that has fascinated people for many years. There are many different theories about the origin of the human skeleton, and there are many different ways to study it. Some people study the skeleton by looking at the bones themselves, while others study it by looking at the way the bones are put together. There are many different ways to study the skeleton, and each way has its own advantages and disadvantages. The human skeleton is a very complex structure, and it is one that is still being studied today.

Hon. George R. Moscone

2

January 11, 1977

When this paragraph is read as a whole, the intent thereof becomes clear that the Civil Service Commission in fact is not without restrictions but rather is mandated to proceed with salary surveys in a manner which is subsequently provided.

The fourth paragraph of Section 8.407 commences as follows:

"The commission shall collect basic pay rate data for like work and like service from Bay Area public jurisdictions as follows: . . ."

Thereafter, subparagraphs indicate the sources from which public jurisdiction data shall be gathered. Subsection (c) continues to define the sources of public surveys and also provides the sources from which the Commission shall collect private basic pay rate data.

Subsection (c) is not in conflict with the second paragraph of Section 8.407 but in fact provides the manner for collecting wage data that is referred to in the second paragraph of same section. It is in a sense "restrictive," but it appears the plain meaning of the entire Section 8.407 is to be somewhat restrictive regarding the manner utilized to collect data and ascertain prevailing wage rates.

The issue of unlawful delegation of basic judgment functions is not relevant to Section 8.407 of the Charter. No delegation of legislative authority is in fact taking place pursuant to said section. (See Kugler v. Yocum, 69 Cal.2d 371.)

In the last paragraph of Mr. Van Bourg's letter it is stated that "It is intended by the drafting of the Charter provision [§8.407] and text of the amendment that State law including Meyers-Miliias-Brown would be followed." It is not clear what is meant by this sentence. Presumably, Mr. Van Bourg means that meeting and conferring shall still take place in view of Section 8.407. I do not disagree with that conclusion.

However, Section 3500 of the Meyers-Miliias-Brown Act specifically provides that nothing contained therein shall supersede the provisions of local charters. I see no conflict between Section 8.407 of the Charter and the requirement that

1000

1000

1000

1000

1000

1000

1000

1000

1000

1000

1000

1000

1000

1000

1000

Hon. George R. Moscone

3

January 11, 1977

the City and County has to meet and confer with recognized employee organizations. Meeting and conferring, in my opinion, can still take place with appropriate bodies and at appropriate times for the purpose of exchanging information, opinions and proposals and attempting to arrive at agreements on those issues within the scope of representation.

You have also asked me the extent of the Mayor's Charter powers with regard to the issue of fixing wages for the employees of the City and County.

The methods for fixing salaries pursuant to the various pertinent sections of the Charter involve the exercise of duties by various officers and boards, excluding the Mayor, and culminates in the adoption of an ordinance by the Board of Supervisors which is then forwarded to the Mayor for approval or veto. The Mayor may approve the ordinance or veto the ordinance and return it to the Clerk of the Board with written objections. The Mayor is not empowered to increase the salaries contained in said ordinance.

You are so advised.

Very truly yours,

THOMAS M. O'CONNOR
City Attorney



5F
47
3
77.3

SF City Attorney
=

Letter Opinion No. 77-3

DOCUMENTS

January 24, 1977

RECEIVED
PUBLIC LIBRARY

Mr. Paul T. Scannell
Senior Personnel Officer
San Francisco General Hospital
Medical Center
1001 Potrero Avenue
San Francisco, California 94110

Subject: Legality of method of providing services for in-patient Psychiatric Unit at San Francisco General Hospital

Dear Mr. Scannell:

This is in response to your letter of December 31, 1976 requesting my opinion whether partially staffing the new in-patient psychiatric unit at San Francisco General Hospital Medical Center (Hospital) by contract would be in conflict with the Charter or any other state or local regulation.

You have stated that until the present the in-patient psychiatric unit on site at the Hospital was part of the Community Mental Health Services of the Department of Public Health and operated completely separate from the Hospital except for some housekeeping functions. Now it has been decided to place the in-patient psychiatric unit in the new Hospital with an upgrading and expanded level of psychiatric service by establishing a Department of Psychiatry similar to other medical departments already existing at the Hospital.

Establishment of the Department of Psychiatry with a Chief and Assistant Chief and professional attending staff can be accomplished under the existing 1959 agreement with the University of California Medical School wherein the School of Medicine agreed to provide chiefs and assistant chiefs and

1900

1900

1900

1900

1900

Mr. Paul T. Scannell

-2-

January 24, 1977

professional attending staff for various medical and surgical services at the Hospital, among them psychiatry.

Apparently, a psychiatric service had not been provided at the Hospital by the School of Medicine because it had not been requested, authorized and funded by the City pursuant to the contract. Consequently, such psychiatric service can be established now under the terms of the contract by the Hospital requesting the School of Medicine to provide such service and funding it.

To provide in-patient psychiatric services which will not be provided under the 1959 agreement the Department of Public Health will assign a number of its employees from the Community Mental Health Services to the new unit but these employees in various civil service classifications will only provide a portion of the staff necessary for the expanded level of services. Hence, the Department of Public Health wishes to further contract with the School of Medicine to provide the remainder of the personnel. The services to be provided by this contract are enumerated as follows: psychologists, psychiatric social workers, specialized expressive and rehabilitative therapists, e.g., occupational therapists, vocational rehabilitation counselors, dance, music, and art therapists, psychiatric technicians, nursing coordinator, nursing supervisor, nursing instructors and head nurse.

Thus, the issue resolves itself to whether the Department of Public Health may contract with the School of Medicine for services to be provided by the enumerated positions above or must use employees provided through the civil service system of the City and County.

Section 8.300 of the Charter requires that all positions in the City and County service, with certain specified exceptions not relevant here, shall be included in the classified civil service. As interpreted and applied by the courts, such civil service provision of basic law require as a general principle that where the services are permanent and of such a nature that they can be satisfactorily performed by one selected under the provisions of civil service, the selection must be made in that manner and not by independent contract. (See State Compensation Insurance Fund v. Riley, 9 Cal.2d 126; California School Employees Assn. v. Sequoia Unified High Sch. Dist., 272 Cal.App.2d

THE JOURNAL OF THE ROYAL ANTHROPOLOGICAL INSTITUTE, Vol. 100, Pt. 2, 2000, pp. 251-252.

THE JOURNAL OF THE ROYAL ANTHROPOLOGICAL INSTITUTE, Vol. 100, Pt. 2, 2000, pp. 251-252.

THE JOURNAL OF THE ROYAL ANTHROPOLOGICAL INSTITUTE, Vol. 100, Pt. 2, 2000, pp. 251-252.

THE JOURNAL OF THE ROYAL ANTHROPOLOGICAL INSTITUTE, Vol. 100, Pt. 2, 2000, pp. 251-252.

THE JOURNAL OF THE ROYAL ANTHROPOLOGICAL INSTITUTE, Vol. 100, Pt. 2, 2000, pp. 251-252.

Mr. Paul T. Scannell

-3-

January 24, 1977

98; California School Employees Assn. v. Willits Unified Sch. Dist., 243 Cal.App.2d 776; Stocksburger v. Riley, 21 Cal.App.2d 165.)

However, special circumstances may exist in connection with certain services which would justify the performance of the services under independent contract. For example, the cases of San Francisco v. Boyd, 17 Cal.2d 606, and Kennedy v. Ross, 28 Cal.2d 569, upheld the legal propriety under the Charter of retaining expert temporary services by contract. Barum v. State Comp. Ins. Fund, 30 Cal.2d 575, sustained the hiring of expert temporary services under contract where it was demonstrated that the service could not be satisfactorily performed under existing civil service classifications.

In the instant circumstances, where the nature of the services of the positions enumerated in the fourth paragraph of this letter are the same as the duties prescribed in civil service classification and have been performed on a permanent basis by civil service employees in the Department of Public Health, those positions would have to be filled through civil service procedures and not by independent contract. On the other hand, where it can be demonstrated that the services could not be satisfactorily provided under existing civil service classifications, those positions could be filled by entering into a contract with the School of Medicine. As to which method may be used to obtain services in a particular position would in the first instance be determined by the Civil Service Commission of the City and County.

You are so advised.

Very truly yours,

THOMAS M. O'CONNOR
City Attorney



7
SF City Attorney

Letter Opinion No. 77-4

7-4
January 31, 1977

Supervisor Quentin Kopp
Board of Supervisors
City Hall
San Francisco, California

Subject: Residency Requirement for Member of
Board of Education

Dear Supervisor Kopp:

This office has reviewed your letter of January 7, 1977 in which you refer to the Mayor's appointment of Ms. Rosario Anaya to the Board of Education and state "it is claimed by constituents that she has been a resident of 655 12th Street, Oakland".

You then ask, "What is the legal requirement for members of the Board of Education who are appointed to such board as distinguished from those who are elected . . ."

Initially you should note that this office has not undertaken to investigate the facts set forth in a letter seeking an opinion. Therefore this letter should not be interpreted to establish or affirm the existence of the facts as you have alleged them in your request for an opinion. This opinion analyzes the facts as you have stated them in the terms of the legal consequences flowing therefrom.

Initially you should note that Charter Section 8.100 which applies to the instant case provides in relevant part,



Supervisor Quentin Kopp

2

January 31, 1977

"No person . . . shall be appointed as a member of any board or commission unless he shall have been a resident of the City and County for a period of at least five years and an elector thereof for at least one year immediately prior to the time of his taking office, unless otherwise specifically provided in this charter . . . and every . . . member of any board or commission shall continue to be a resident of the City and County during incumbency of office, and upon ceasing to be such a resident shall be removed from office."

Several recent decisions by the Supreme Court have held invalid various pre or waiting-period residency requirements as a condition for seeking public office. See Zeilenga vs. Nelson 4 Cal.3d 716 (1971); Thompson v. Mellon 9 Cal.3d 96 (1973) and Johnson vs. Hamilton 15 Cal.3d 461 (1975). These cases have also suggested that any pre or waiting period residency requirement in excess of 30 days is invalid. The residency requirement set forth in Charter Section 8.100 imposes a five year residency and one year elector pre or waiting period requirement as a condition for assuming appointive and elective offices. In light of these cases it must be concluded that the five year residency and one year elector requirements in Charter Section 8.100 are invalid and that the charter does not therefore impose any valid or waiting period residency or elector requirement.

However, this office has concluded that as applied to persons seeking appointment to appointive boards and commissions, the five residency and one year elector requirements are still valid and enforceable. See for example opinion No. 74 - 94 addressed to the Clerk of the Board of Supervisors on September 3, 1974, a copy of that opinion is attached for your information.

A resolution of the question posed by your inquiry turns on whether Ms. Anaya should be considered as filling an appointive or elective office. Since the position she has been nominated to fill is an elective office, it is my opinion that all qualifications and limitations on qualifications for elective offices should apply and that there is therefore no pre or

| ARTICLE | | PAGE | |
|---------|----|------|-----|
| 1 | 2 | 3 | 4 |
| 5 | 6 | 7 | 8 |
| 9 | 10 | 11 | 12 |
| 13 | 14 | 15 | 16 |
| 17 | 18 | 19 | 20 |
| 21 | 22 | 23 | 24 |
| 25 | 26 | 27 | 28 |
| 29 | 30 | 31 | 32 |
| 33 | 34 | 35 | 36 |
| 37 | 38 | 39 | 40 |
| 41 | 42 | 43 | 44 |
| 45 | 46 | 47 | 48 |
| 49 | 50 | 51 | 52 |
| 53 | 54 | 55 | 56 |
| 57 | 58 | 59 | 60 |
| 61 | 62 | 63 | 64 |
| 65 | 66 | 67 | 68 |
| 69 | 70 | 71 | 72 |
| 73 | 74 | 75 | 76 |
| 77 | 78 | 79 | 80 |
| 81 | 82 | 83 | 84 |
| 85 | 86 | 87 | 88 |
| 89 | 90 | 91 | 92 |
| 93 | 94 | 95 | 96 |
| 97 | 98 | 99 | 100 |

Supervisor Quentin Kopp

3

January 31, 1977

waiting period residency requirement applicable to Ms. Anaya.

It should be noted, however, that your letter is unclear. You state " . . . that she has been a resident of . . . Oakland . . ." Upon assuming office Ms. Anaya must be and must continue to be a resident of the City and County for the duration of her incumbency as a member of the Board of Education. The charter may and does validly require that all members of all boards and commissions whether elected or appointed be and continue to be residents for the incumbency of their terms of office.

Very truly yours,

THOMAS M. O'CONNOR
City Attorney



7
7-5

SF City Attorney

Letter Opinion No. 77-5

DOCUMENTS
FEB 10 1977
LIBRARY

February 2, 1977

Mr. Darrell Salomon
Civil Service Commission
151 City Hall
San Francisco, California 94102

Subject: Questions Relating to Interpreting of Charter
Section 8.407 Regarding Survey of Data in
Private Industry

Dear Mr. Salomon:

This is in reply to your recent oral request for an opinion on two questions regarding the above referred to Charter section.

Your first question asks if the Commission may, in lieu of utilizing any "recognized governmental survey" under Proposition D [Charter §8.407] perform its own "governmental survey" of private wages, and utilize only that private data in its salary survey.

Your second inquiry asks if the Commission may, under Charter Section 8.407, utilize one "recognized governmental survey" (commonly referred to as "BASSC") for certain classifications and utilize another "recognized governmental survey" (Davis-Bacon) for other classifications.

Charter Section 8.407 in pertinent part reads as follows:

"The Commission shall collect private basic pay rate data from recognized governmental Bay Area salary and wage surveys of private employers in the City and County of San Francisco, Alameda, Contra Costa, Marin, San Mateo and Santa Clara counties. . . ."



Mr. Darrell Salomon

-2-

February 2, 1977

Unless an ambiguity exists, the intent of a statute is to be gathered from the words and language employed therein, read as a whole. (Brown v. Francisco (1954) 123 Cal.App. 2d 413.) An intent that finds no expression in the words of a statute cannot be found to exist. (In re Goodrich (1911) 160 Cal.410.) Where the meaning of a statute is plain, its language clear and unambiguous, it is the universal rule that courts must follow the language used and give to it its plain meaning, irrespective of the wisdom, expediency or policy of the act. (Smith v. Union Oil (1913) 166 Cal.217; Bourland v. Heldreth (1864) 26 Cal.161.)

In answer to your first question, it is my opinion that the Charter language in question relating to the obtaining of private industry pay data from recognized governmental Bay Area salary surveys is clear as to its meaning and intent and cannot validly be construed to conclude that the civil service commission may conduct its own survey of private industry rates and use the results thereof in lieu of the prescribed surveys. The language indicates that the commission is required to collect data from appropriate surveys of private industry; it does not indicate that the commission is to gather data directly from private industry as would be the case if the commission conducted its own survey. Moreover, if it had been the intent of the legislative body for the commission to conduct its own survey of private industry pay data, it is logical to presume that said legislative body would have so provided as it did in the case of surveys regarding public employment pay rate data. (See Par.4, et seq., Charter §8.407.)

The second paragraph of Charter Section 8.407 provides in part that "the civil service commission shall conduct a comprehensive investigation and survey of basic pay rates and wages and salaries. . . . for like work and like services, based upon classification. . . ." (Emphasis added.)

In answer to your second question, it is my opinion that if the data collected by the civil service commission from a recognized governmental survey or surveys contains pay rates, wages and salaries, classifications doing like work and like services as City and County classifications, the



Mr. Darrell Salomon

-3-

February 2, 1977

above mentioned Charter language would require the utilization of all the pertinent classification data so collected and not just selected portions thereof.

While this conclusion precludes discretion on the part of the commission to arbitrarily ignore data in one survey and utilize possible more favorable data in another, it should not be interpreted to prevent the commission from refusing to utilize data which it determines is incomplete, misleading, or clearly erroneous.

Very truly yours,

THOMAS M. O'CONNOR
City Attorney



DOCUMENTS
FEB 10 1977
FEB 10 1977
February 8, 1977

Mr. John C. Farrell
Controller
City and County of San Francisco
109 City Hall
San Francisco, CA 94102

Subject: Charter Section 6.305; Duties Of
Controller With Respect To Transfer
Thereunder

Dear Mr. Farrell:

This is in response to your recent inquiry as to the meaning of Section 6.305 of the Charter as amended in 1975. This section, as amended, reads as follows:

"6.305 Transfers

"Upon written recommendation of the chief administrative officer, or board or commission for the use of which funds have been appropriated, and the approval of the mayor, the board of supervisors may transfer an unencumbered balance, or part thereof, of an appropriation made for the use of one department, to another. No such transfer shall be made of utility, bond, school, pension or trust funds, except by way of loans as in this charter provided. On request of a department head and approval by the chief administrative officer, board or commission, respectively, amounts up to ten percent (10%)



THE JOURNAL OF THE ROYAL SOCIETY OF MEDICINE

THE JOURNAL OF THE ROYAL SOCIETY OF MEDICINE

Mr. John C. Farrell

2

February 8, 1977

of funds appropriated for contractual services, materials and supplies, equipment, and other specific purposes except personal services may be transferred and used for another purpose within the department. No such transfer of funds shall be used for personal services, or for personal service contracts, or for items that were the subject of previous budgetary denial by the mayor or the board of supervisors, except that the board of supervisors may, by ordinance, adopt regulations for the transfer of funds appropriated for specific personal services for use for other specific personal services, and may, by ordinance, require the review and approval by the board of supervisors or a committee of the board of supervisors of the transfer of funds so appropriated. Department heads shall report without delay all such transfers to the mayor, board of supervisors, and the controller. On request of a department head and approval by the chief administrative officer, board or commission, respectively, and on the authorization of the controller, any funds appropriated for a specific purpose of such department which become surplus may be transferred and used for another specific purpose within the department; provided, however, that such surplus shall not be transferred to a capital improvement project unless such project shall have been previously approved in accordance with the provisions of sections 3.527, 6.202, 6.203 or 6.205 of this charter. The controller shall prescribe the method to be used in making payments for interdepartmental services."

You advise that you interpret the section, as amended, as prohibiting any transfer of funds within a department for (1) personal services, (2) personal service contracts, or (3) items previously denied by either the Mayor or the Board of Supervisors.

| | |
|---------------------------------|--|
| THE JOURNAL OF THE | |
| ROYAL ANTHROPOLOGICAL INSTITUTE | |
| 1901-1902 | |
| 1 | |
| 2 | |
| 3 | |
| 4 | |
| 5 | |
| 6 | |
| 7 | |
| 8 | |
| 9 | |
| 10 | |
| 11 | |
| 12 | |
| 13 | |
| 14 | |
| 15 | |
| 16 | |
| 17 | |
| 18 | |
| 19 | |
| 20 | |
| 21 | |
| 22 | |
| 23 | |
| 24 | |
| 25 | |
| 26 | |
| 27 | |
| 28 | |
| 29 | |
| 30 | |
| 31 | |
| 32 | |
| 33 | |
| 34 | |
| 35 | |
| 36 | |
| 37 | |
| 38 | |
| 39 | |
| 40 | |
| 41 | |
| 42 | |
| 43 | |
| 44 | |
| 45 | |
| 46 | |
| 47 | |
| 48 | |
| 49 | |
| 50 | |
| 51 | |
| 52 | |
| 53 | |
| 54 | |
| 55 | |
| 56 | |
| 57 | |
| 58 | |
| 59 | |
| 60 | |
| 61 | |
| 62 | |
| 63 | |
| 64 | |
| 65 | |
| 66 | |
| 67 | |
| 68 | |
| 69 | |
| 70 | |
| 71 | |
| 72 | |
| 73 | |
| 74 | |
| 75 | |
| 76 | |
| 77 | |
| 78 | |
| 79 | |
| 80 | |
| 81 | |
| 82 | |
| 83 | |
| 84 | |
| 85 | |
| 86 | |
| 87 | |
| 88 | |
| 89 | |
| 90 | |
| 91 | |
| 92 | |
| 93 | |
| 94 | |
| 95 | |
| 96 | |
| 97 | |
| 98 | |
| 99 | |
| 100 | |

Mr. John C. Farrell

3

February 8, 1977

You further advise that the Mayor's Office disagrees with your interpretation.

A reading of Section 6.305, supra, as amended, shows that it authorizes three (3) types of transfers, as follows:

1. It authorizes the Board of Supervisors to transfer an unencumbered balance, or a part thereof, of an appropriation made for the use of one City and County department to another City and County department. However, no such transfer may be made unless it is recommended, in writing, by the Chief Administrative Officer or by the Board or Commission for the use of which the funds to be transferred have been appropriated, and is approved by the Mayor. Furthermore, no such outright transfer may be made, at any time, of utility funds, bond funds, school funds, pension funds or trust funds.
2. It authorizes the Controller to transfer any funds appropriated to a department for a specific purpose and which become surplus for such purpose, to another specific purpose within such department. However, no such transfer may be made unless it is requested by the department head and is approved by the Chief Administrative Officer or by the appropriate Board or Commission. Furthermore, no such transfer may be made to a capital improvement project unless such project has been previously approved in accordance with the provisions of Sections 3.527, 6.202, 6.203 or 6.205 of the Charter.

THE UNIVERSITY OF CHICAGO

PHYSICS DEPARTMENT

CHICAGO, ILL. 60637

RECEIVED: [illegible] [illegible] [illegible]

FROM: [illegible]

[The following text is extremely faint and largely illegible. It appears to be a letter or report containing several paragraphs of text, possibly including a title, a body of text, and a signature block at the bottom. Some words like "Dear Sir" and "Very truly yours" might be discernible.]

Mr. John C. Farrell

4

February 8, 1977

3. It authorizes the transfer of amounts up to ten percent (10%) of funds appropriated to a department for contractual services, materials and supplies, equipment or any other specific purpose (except personal services) for another purpose (except personal services or for personal service contracts) within the department. However, no such transfer may be made unless it is requested by the department head and approved by the Chief Administrative Officer or by the appropriate Board or Commission. Furthermore, no such transfer may be made so as to be used for an item that was the subject of a previous budget denial by either the Mayor or the Board of Supervisors. The Board of Supervisors is authorized, by ordinance, to permit transfer of personal services funds, or to require approval by the Board, or any committee thereof, of any transfer authorized herein; but, to date, no such ordinance or ordinances have been enacted by the Board of Supervisors. Finally, any department head making such a transfer must immediately report the same to the Mayor, the Board of Supervisors and the Controller.

The transfers summarized in 1 and 2 above have been in effect since the adoption of the Charter in 1931 (Stats. 1931, Ch. 56, pp. 74-76.) The transfer summarized in 3 above was added by the 1975 amendment.

The 1975 amendment, as such, indicates no intent to modify or in any way affect the transfers theretofore authorized under Section 6.305, supra. Rather, it indicates an intent to augment or expand the power to transfer funds within a department by adding an additional method.

It is a well established rule of statutory construction that parts of an amended statute which are not affected by the amendment will be given the same construction that they received before the amendment (45 Cal. Jur.2d

| | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|------|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 | 21 | 22 | 23 | 24 | 25 | 26 | 27 | 28 | 29 | 30 | 31 | 32 | 33 | 34 | 35 | 36 | 37 | 38 | 39 | 40 | 41 | 42 | 43 | 44 | 45 | 46 | 47 | 48 | 49 | 50 | 51 | 52 | 53 | 54 | 55 | 56 | 57 | 58 | 59 | 60 | 61 | 62 | 63 | 64 | 65 | 66 | 67 | 68 | 69 | 70 | 71 | 72 | 73 | 74 | 75 | 76 | 77 | 78 | 79 | 80 | 81 | 82 | 83 | 84 | 85 | 86 | 87 | 88 | 89 | 90 | 91 | 92 | 93 | 94 | 95 | 96 | 97 | 98 | 99 | 100 | 101 | 102 | 103 | 104 | 105 | 106 | 107 | 108 | 109 | 110 | 111 | 112 | 113 | 114 | 115 | 116 | 117 | 118 | 119 | 120 | 121 | 122 | 123 | 124 | 125 | 126 | 127 | 128 | 129 | 130 | 131 | 132 | 133 | 134 | 135 | 136 | 137 | 138 | 139 | 140 | 141 | 142 | 143 | 144 | 145 | 146 | 147 | 148 | 149 | 150 | 151 | 152 | 153 | 154 | 155 | 156 | 157 | 158 | 159 | 160 | 161 | 162 | 163 | 164 | 165 | 166 | 167 | 168 | 169 | 170 | 171 | 172 | 173 | 174 | 175 | 176 | 177 | 178 | 179 | 180 | 181 | 182 | 183 | 184 | 185 | 186 | 187 | 188 | 189 | 190 | 191 | 192 | 193 | 194 | 195 | 196 | 197 | 198 | 199 | 200 | 201 | 202 | 203 | 204 | 205 | 206 | 207 | 208 | 209 | 210 | 211 | 212 | 213 | 214 | 215 | 216 | 217 | 218 | 219 | 220 | 221 | 222 | 223 | 224 | 225 | 226 | 227 | 228 | 229 | 230 | 231 | 232 | 233 | 234 | 235 | 236 | 237 | 238 | 239 | 240 | 241 | 242 | 243 | 244 | 245 | 246 | 247 | 248 | 249 | 250 | 251 | 252 | 253 | 254 | 255 | 256 | 257 | 258 | 259 | 260 | 261 | 262 | 263 | 264 | 265 | 266 | 267 | 268 | 269 | 270 | 271 | 272 | 273 | 274 | 275 | 276 | 277 | 278 | 279 | 280 | 281 | 282 | 283 | 284 | 285 | 286 | 287 | 288 | 289 | 290 | 291 | 292 | 293 | 294 | 295 | 296 | 297 | 298 | 299 | 300 | 301 | 302 | 303 | 304 | 305 | 306 | 307 | 308 | 309 | 310 | 311 | 312 | 313 | 314 | 315 | 316 | 317 | 318 | 319 | 320 | 321 | 322 | 323 | 324 | 325 | 326 | 327 | 328 | 329 | 330 | 331 | 332 | 333 | 334 | 335 | 336 | 337 | 338 | 339 | 340 | 341 | 342 | 343 | 344 | 345 | 346 | 347 | 348 | 349 | 350 | 351 | 352 | 353 | 354 | 355 | 356 | 357 | 358 | 359 | 360 | 361 | 362 | 363 | 364 | 365 | 366 | 367 | 368 | 369 | 370 | 371 | 372 | 373 | 374 | 375 | 376 | 377 | 378 | 379 | 380 | 381 | 382 | 383 | 384 | 385 | 386 | 387 | 388 | 389 | 390 | 391 | 392 | 393 | 394 | 395 | 396 | 397 | 398 | 399 | 400 | 401 | 402 | 403 | 404 | 405 | 406 | 407 | 408 | 409 | 410 | 411 | 412 | 413 | 414 | 415 | 416 | 417 | 418 | 419 | 420 | 421 | 422 | 423 | 424 | 425 | 426 | 427 | 428 | 429 | 430 | 431 | 432 | 433 | 434 | 435 | 436 | 437 | 438 | 439 | 440 | 441 | 442 | 443 | 444 | 445 | 446 | 447 | 448 | 449 | 450 | 451 | 452 | 453 | 454 | 455 | 456 | 457 | 458 | 459 | 460 | 461 | 462 | 463 | 464 | 465 | 466 | 467 | 468 | 469 | 470 | 471 | 472 | 473 | 474 | 475 | 476 | 477 | 478 | 479 | 480 | 481 | 482 | 483 | 484 | 485 | 486 | 487 | 488 | 489 | 490 | 491 | 492 | 493 | 494 | 495 | 496 | 497 | 498 | 499 | 500 | 501 | 502 | 503 | 504 | 505 | 506 | 507 | 508 | 509 | 510 | 511 | 512 | 513 | 514 | 515 | 516 | 517 | 518 | 519 | 520 | 521 | 522 | 523 | 524 | 525 | 526 | 527 | 528 | 529 | 530 | 531 | 532 | 533 | 534 | 535 | 536 | 537 | 538 | 539 | 540 | 541 | 542 | 543 | 544 | 545 | 546 | 547 | 548 | 549 | 550 | 551 | 552 | 553 | 554 | 555 | 556 | 557 | 558 | 559 | 560 | 561 | 562 | 563 | 564 | 565 | 566 | 567 | 568 | 569 | 570 | 571 | 572 | 573 | 574 | 575 | 576 | 577 | 578 | 579 | 580 | 581 | 582 | 583 | 584 | 585 | 586 | 587 | 588 | 589 | 590 | 591 | 592 | 593 | 594 | 595 | 596 | 597 | 598 | 599 | 600 | 601 | 602 | 603 | 604 | 605 | 606 | 607 | 608 | 609 | 610 | 611 | 612 | 613 | 614 | 615 | 616 | 617 | 618 | 619 | 620 | 621 | 622 | 623 | 624 | 625 | 626 | 627 | 628 | 629 | 630 | 631 | 632 | 633 | 634 | 635 | 636 | 637 | 638 | 639 | 640 | 641 | 642 | 643 | 644 | 645 | 646 | 647 | 648 | 649 | 650 | 651 | 652 | 653 | 654 | 655 | 656 | 657 | 658 | 659 | 660 | 661 | 662 | 663 | 664 | 665 | 666 | 667 | 668 | 669 | 670 | 671 | 672 | 673 | 674 | 675 | 676 | 677 | 678 | 679 | 680 | 681 | 682 | 683 | 684 | 685 | 686 | 687 | 688 | 689 | 690 | 691 | 692 | 693 | 694 | 695 | 696 | 697 | 698 | 699 | 700 | 701 | 702 | 703 | 704 | 705 | 706 | 707 | 708 | 709 | 710 | 711 | 712 | 713 | 714 | 715 | 716 | 717 | 718 | 719 | 720 | 721 | 722 | 723 | 724 | 725 | 726 | 727 | 728 | 729 | 730 | 731 | 732 | 733 | 734 | 735 | 736 | 737 | 738 | 739 | 740 | 741 | 742 | 743 | 744 | 745 | 746 | 747 | 748 | 749 | 750 | 751 | 752 | 753 | 754 | 755 | 756 | 757 | 758 | 759 | 760 | 761 | 762 | 763 | 764 | 765 | 766 | 767 | 768 | 769 | 770 | 771 | 772 | 773 | 774 | 775 | 776 | 777 | 778 | 779 | 780 | 781 | 782 | 783 | 784 | 785 | 786 | 787 | 788 | 789 | 790 | 791 | 792 | 793 | 794 | 795 | 796 | 797 | 798 | 799 | 800 | 801 | 802 | 803 | 804 | 805 | 806 | 807 | 808 | 809 | 810 | 811 | 812 | 813 | 814 | 815 | 816 | 817 | 818 | 819 | 820 | 821 | 822 | 823 | 824 | 825 | 826 | 827 | 828 | 829 | 830 | 831 | 832 | 833 | 834 | 835 | 836 | 837 | 838 | 839 | 840 | 841 | 842 | 843 | 844 | 845 | 846 | 847 | 848 | 849 | 850 | 851 | 852 | 853 | 854 | 855 | 856 | 857 | 858 | 859 | 860 | 861 | 862 | 863 | 864 | 865 | 866 | 867 | 868 | 869 | 870 | 871 | 872 | 873 | 874 | 875 | 876 | 877 | 878 | 879 | 880 | 881 | 882 | 883 | 884 | 885 | 886 | 887 | 888 | 889 | 890 | 891 | 892 | 893 | 894 | 895 | 896 | 897 | 898 | 899 | 900 | 901 | 902 | 903 | 904 | 905 | 906 | 907 | 908 | 909 | 910 | 911 | 912 | 913 | 914 | 915 | 916 | 917 | 918 | 919 | 920 | 921 | 922 | 923 | 924 | 925 | 926 | 927 | 928 | 929 | 930 | 931 | 932 | 933 | 934 | 935 | 936 | 937 | 938 | 939 | 940 | 941 | 942 | 943 | 944 | 945 | 946 | 947 | 948 | 949 | 950 | 951 | 952 | 953 | 954 | 955 | 956 | 957 | 958 | 959 | 960 | 961 | 962 | 963 | 964 | 965 | 966 | 967 | 968 | 969 | 970 | 971 | 972 | 973 | 974 | 975 | 976 | 977 | 978 | 979 | 980 | 981 | 982 | 983 | 984 | 985 | 986 | 987 | 988 | 989 | 990 | 991 | 992 | 993 | 994 | 995 | 996 | 997 | 998 | 999 | 1000 |
|---|---|---|---|---|---|---|---|---|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|------|

Mr. John C. Farrell

5

February 8, 1977

Statutes, Sec. 161, p. 663; Brailsford v. Blue (1962) 57 Cal.2d 335, 339; Barber v. Palo Verde Mutual Water Co. (1926) 198 Cal. 649, 641.)

Accordingly, it is my opinion that you should continue to interpret the provisions of Section 6.305 of the Charter with reference to the transfer summarized in 1 and 2 above in the same manner as you interpreted them prior to the 1975 amendment to said section.

Very truly yours,

THOMAS M. O'CONNOR
City Attorney



February 8, 1977

Andrew C. Casper
Chief, San Francisco Fire Department
260 Golden Gate Avenue
San Francisco, CA 94102

Subject: Permit Requirements for Multiple Motion
Picture Theater Occupancies in a Single
Building

Dear Chief Casper:

This is in response to your request for an opinion as to whether separate maintenance permits are required for each motion picture theater located within a single building.

Section 20.03 of the San Francisco Fire Code (Part II, Chapter IV of the San Francisco Municipal Code) provides in relevant part, "no building or structure housing a...motion picture theater...shall be maintained, operated or used with such purpose unless a permit has been issued by the Fire Department...." "Motion Picture Theater" is defined under Fire Code Section 20.01 as follows:

a building or part of a building without a working stage designed for the specific purpose of displaying a motion, audible or television pictures before an assemblage of persons whether such assemblage be of a public restricted or private nature....

In light of the specific language of F.C. Sec. 20.01, "building or part of a building," and "an assemblage of persons,"



Andrew C. Casper

2

February 8, 1977

it would appear that the legislative intention of F.C. Sec. 20.03 is to require a permit for each part of a building where a motion picture is displayed before a separate assemblage of persons.

Moreover, the requirement for separate permits for each theater within a single building is consistent with the entire regulatory scheme provided by the San Francisco Municipal Code to protect the health and safety of theater patrons. Fire Code Section 5.24 provides for filing fees for various types of permits, including permits for motion picture theaters, to cover the cost of "first time inspections." Section 5.24 further provides that

...if a permit is subsequently issued, such appropriate filing fee shall be allowed as a credit against the fee required for the license that is required in Article 2, Part II of the Municipal Code.

Section 143 of Article 2, Part II of the Municipal Code provides in relevant part:

Every person, firm, or corporation maintaining, conducting or operating a...motion picture theater...shall pay a license fee according to the seating capacity of such theater.... (Emphasis added.)

Requiring separate permits for each motion picture theater is also necessary in order to give full and fair effect to the enforcement provisions of Fire Code Section 3.06(e), which states in pertinent part,

Where a fire hazard is found to exist by the chief of division in any part of the building or premises where a business, enterprise or activity is conducted that requires a permit a written notice may be forwarded by said chief certifying that a fire hazard exists therein to the department or official authorized to approve or issue such permit and to request a hearing to show cause why such permit should not be revoked.... (Emphasis added.)



Andrew C. Casper

3

February 8, 1977

Insofar as a hazardous condition (e.g., aisle obstructions; see F.C. Sec. 20.06) existing in one theater may not result in the existence of a fire hazard in another theater located in the same building, the permit revocation procedures provided under Section 3.06(e) could properly be applied only to that part of the building where the hazard exists. Therefore, the issuance of separate permits for each theater is essential in order to protect the rights of owners and operators who are in compliance with the Fire Code and to effectively enforce fire regulations against violators of the Code.

In light of the foregoing, you are advised that separate permits are required to be issued by the Fire Department for each motion picture theater located within a single building. You are further advised that, pursuant to Fire Code Section 20.03(b), such permits may be issued only to owners or operators of motion picture theaters.

Very truly yours,

THOMAS M. O'CONNOR
City Attorney

DOCUMENTS
FEB 17 1977
SAN FRANCISCO
PUBLIC LIBRARY
February 16, 1977

Mr. Gilbert H. Boreman
Clerk of the Board
Board of Supervisors
City and County of San Francisco
235 City Hall
San Francisco, CA 94102

Subject: Utilization Of Salary Data To
Be Effective On July 1, 1977
Under Charter Section 8.407

Dear Mr. Boreman:

This is in response to your request for an opinion on behalf of Supervisor Quentin L. Kopp as to whether the Civil Service Commission in conducting its survey under Charter Section 8.407 could utilize salary data from a jurisdiction which covers salary levels due to become effective on July 1, 1977.

Charter Section 8.407 sets forth the method by which the Civil Service Commission shall determine the generally prevailing rates of salaries and wages for those employees covered by Charter Section 8.401. The basic pay rate data for both public and private employment is collected solely from Bay Area counties, with an exception for insufficient data from the named Bay Area counties.

With regard to the data collected from private employers Section 8.407 contains a limitation that the data collected shall be limited to rates of pay and salaries actually being



Mr. Gilbert H. Boreman

2

February 16, 1977

paid by private employers for like-work and like-service. Section 8.407 contains no such limitation on the data collected from public jurisdictions.

The general purpose of Charter Section 8.401 and Section 8.407 is to provide a method whereby a generally prevailing wage can be established for the various classifications of employment covered by those sections. Section 8.401 further provides for a procedure whereby the Civil Service Commission submits "prevailing rates" to the Board of Supervisors and the Board of Supervisors adopts the schedules of compensation on or before April 1st so that these schedules will go into effect at the beginning of the next succeeding fiscal year.

Except for the limitation on the collection of private data contained in Section 8.407, supra, there is no time mentioned in Section 8.401 or Section 8.407 on when the compensation must be paid in other jurisdictions before such data can be used in the survey. The object of the two sections is to establish a "prevailing rate" to be effective July 1, 1977. This must be liberally construed in favor of the worker. (Alameda County Employees' Association vs. County of Alameda (1973) 30 C.A.3d at page 531.) In the Alameda County Employees' Association case the court held that the County of Alameda properly used data from San Francisco County to establish a prevailing rate where San Francisco had passed its salary ordinance at the time of Alameda's survey but was not effective until July 1st, which date was the same as Alameda's effective date of its salary ordinance.

It is, therefore, my opinion that in conducting its survey of public jurisdictions the Civil Service Commission may use data where the public jurisdiction has rendered definite and certain rates of compensation to be paid on July 1, 1977. This would be in the form of legislation finally passed or a contract fully executed and approved by the legislative body.

Very truly yours,

THOMAS M. O'CONNOR
City Attorney



247
13
7-9

SF City Attorney

DOCUMENTS

April 11, 1977

LIBRARY

Hon. Quentin L. Kopp, President
Board of Supervisors
235 City Hall
San Francisco, Calif.

Subject: Charter Section 8.311; Nonpartisan
Political Activity of City Employees

Dear Supervisor Kopp:

I have reviewed your letter of April 1, 1977 in which you refer to Opinion No. 74-54 of May 28, 1974, subject "Section 8.311, Charter; Nonpartisan Political Activity of City Employees; Endorsement of Supervisorial Candidates and Contributions to their Campaigns." In Opinion 74-54 I stated as follows:

"This is in response to your request for my opinion whether or not Section 8.311 of the Charter is still in effect to prohibit political activity of City employees. In particular you cite an article which appeared in the newspaper which reported that certain City employees and City employee organizations were listed in the Voters Handbook in the General Municipal Election of November 6, 1973, as endorsing supervisorial candidates and that some individual employees and their public employee organizations contributed money to the campaigns of various supervisorial candidates."

I advised you that Charter Section 8.311 was inoperative on the ground that it was overly broad and violated constitutional First Amendment rights based upon California Supreme Court decisions in Fort v. Civil Service Commission, 61 Cal.2d 331; Kinnear v. City and County of San Francisco, 65 Cal. 341; Bagley v. Washington Township Hospital District, 65 Cal.2d 499; which were reviewed in that opinion.

I concluded Opinion No. 74-54 as follows:



Hon. Quentin L. Kopp

2

April 11, 1977

"In Letter Opinion No. 73-172, dated December 21, 1973, I reviewed state and federal cases on the subject of political activity of public employees. It was my opinion that a proposed Charter amendment prohibiting officers and employees from becoming a candidate for public office without first resigning would be unconstitutional on the basis that our courts would follow the California Supreme Court decisions in the Fort, Kinnear and Bagley cases.

"Similarly, in the subject matter, it is my opinion that the courts would follow the precedent established in the California cases discussed above and hold that Section 8.311 of the Charter is unconstitutional for overbreadth.

"State law also regulates political activity of public employees including employees of charter cities and counties. (§§3201-3206, Govt. Code; see also Fort v. Civil Service Commission, 61 Cal.2d 331, 340, fn. 5.) The court in Bagley held a portion of that law (§3205) unconstitutional for overbreadth but the remaining sections are still in effect. In my opinion the political activities which are the subject of your request would not be proscribed by the applicable portions of state law."

I am advised that you have requested that Charter Section 8.311 be redrafted to contain language prohibiting Civil Service employees from soliciting votes for personal gain and from levying contributions for candidates for City offices.

In 1976 Chapter 9.5 of Title I, Division 4 of the Government Code was added revising Sections 3201-3206. That chapter contains statewide regulations on the political activities of public employees and is directly applicable to the activities you propose to regulate in Charter Section 8.311. Section 3201 of the Government Code presently reads:

1. The first part of the paper discusses the importance of the study and the objectives of the research. It highlights the need for a comprehensive understanding of the subject matter and the role of the researcher in this process.

2. The second part of the paper presents the methodology used in the study. It details the data collection methods, the sample size, and the statistical techniques employed to analyze the data.

3. The third part of the paper discusses the results of the study. It presents the findings of the research and compares them with the existing literature. The results show that there is a significant difference between the two groups.

4. The fourth part of the paper discusses the conclusions of the study. It summarizes the main findings and provides recommendations for future research. The study concludes that the results are promising and that further research is needed to confirm the findings.

5. The fifth part of the paper is the conclusion. It summarizes the main findings and provides recommendations for future research. The study concludes that the results are promising and that further research is needed to confirm the findings.

Hon. Quentin L. Kopp

3

April 11, 1977

"The Legislature finds that political activities of public employees are of significant statewide concern. The provisions of this chapter shall supersede all provisions on this subject in the general law of this state or any city, county, or city and county charter except as provided in Section 3207."

It is clear from that section then that the state legislation has preempted the field of political activity of public employees, except for the delegation set forth in Section 3207. Section 3207:

"Any city, county, or city and county charter or, in the absence of a charter provision, the governing body of any local agency and any agency not subject to Section 19251 by establishing rules and regulations, may prohibit or otherwise restrict the following:

"(a) Officers and employees engaging in political activity during working hours.

"(b) Political activities on the premises of the local agency."

Therefore, in my opinion, neither the Charter nor City ordinance may contain the regulations you propose to place in Charter Section 8.311. The Board is vested with the power to regulate the engaging in political activities during working hours of officers and employees and to regulate political activities on the premises of local agencies such as the City and County of San Francisco.

Chapter 9.5 of the Government Code, Sections 3201-3209, governs the regulations of political activities of employees of the City and County of San Francisco. Those sections provide as follows:



GOVERNMENT CODE

§ 3201

CHAPTER 9.5. POLITICAL ACTIVITIES OF
PUBLIC EMPLOYEES [NEW]

Sec.

- 3201. Legislative findings; supercession of chapter over other laws.
- 3202. Definitions.
- 3203. Prohibition of restrictions; exceptions.
- 3204. Use of office, authority or influence to obtain change in position or compensation upon corrupt condition or consideration.
- 3204.5 Repealed.
- 3205. Solicitation of political funds or contributions from other officers or employees of local agency.
- 3206. Participation in political activity by officer or employee of local agency while in uniform.
- 3207. Political activity during working hours or on premises; rules and regulations.
- 3208. State employees; restrictions.
- 3209. Soliciting or receiving political funds or contributions related to ballot measure on working conditions.

§ 3201. Legislative findings; supercession of chapter over other laws

The Legislature finds that political activities of public employees are of significant statewide concern. The provisions of this chapter shall supersede all provisions on this subject in the general law of this state or any city, county, or city and county charter except as provided in Section 3207.

(Added by Stats.1976, c. 1422, p. —, § 2.)

§ 3202. Definitions

This chapter applies to all officers and employees of a state or local agency.

(a) "Local agency" means a county, city, city and county, political subdivision, district other than a school district, or municipal corporation. Officers and employees of a given local agency include officers and employees of any other local agency whose principal duties consist of providing services to the given local agency.

(b) "State agency" means every state office, department, division, bureau, board, commission, superior court, court of appeal, the Supreme Court, the California State University and Colleges, the University of California, and the Legislature.

(Added by Stats.1976, c. 1422, p. —, § 2.)

§ 3203. Prohibition of restrictions; exceptions

Except as otherwise provided in this chapter, or as necessary to meet requirements of federal law as it pertains to a particular employee or employees, no restriction shall be placed on the political activities of any officer or employee of a state or local agency.

§ 3204. Use of office, authority or influence to obtain change in position or compensation upon corrupt condition or consideration

No one who holds, or who is seeking election or appointment to, any office or employment in a state or local agency shall, directly or indirectly, use, promise, threaten or attempt to use, any office, authority, or influence, whether then possessed or merely anticipated, to confer upon or secure for any individual person, or to aid or obstruct any individual person in securing, or to prevent any individual person from securing, any position, nomination, confirmation, promotion, or change in compensation or position, within the state or local agency, upon consideration or condition that the vote or political influence or action of such person or another shall be given or used in behalf of, or withheld from, any candidate, officer, or party, or upon any other corrupt condition or consideration. This prohibition shall apply to urging or discouraging the individual employee's action.

§ 3205. Solicitation of political funds or contributions from other officers or employees of local agency

An officer or employee of a local agency shall not, directly or indirectly, solicit political funds or contributions, knowingly, from other officers or employees of the local agency or from persons on the employment lists of the local agency. Nothing in this section prohibits an officer or employee of a local agency from communicating through the mail or by other means requests for political funds or contributions to a significant segment of the public which may include officers or employees of the local agency.

§ 3206. Participation in political activity by officer or employee of local agency, while in uniform

No officer or employee of a local agency shall participate in political activities of any kind while in uniform.

(Added by Stats.1976, c. 1422, p. —, § 2.)

§ 3207. Political activity during working hours or on premises; rules and regulations

Any city, county, or city and county charter or, in the absence of a charter provision, the governing body of any local agency and any agency not subject to Section 19251 by establishing rules and regulations, may prohibit or otherwise restrict the following:

(a) Officers and employees engaging in political activity during working hours.

(b) Political activities on the premises of the local agency.

(Added by Stats.1976, c. 1422, p. —, § 2.)

§ 3208. State employees; restrictions

Except as provided in Section 19251, the limitations set forth in this chapter shall be the only restrictions on the political activities of state employees.

(Added by Stats.1976, c. 1422, p. —, § 2.)

§ 3209. Soliciting or receiving political funds or contributions related to ballot measure on working conditions

Nothing in this chapter prevents an officer or employee of a state or local agency from soliciting or receiving political funds or contributions to promote the passage or defeat of a ballot measure which would affect the rate of pay, hours of work, retirement, civil service, or other working conditions of officers or employees of such state or local agency, except that a state or local agency may prohibit or limit such activities by its employees during their working hours and may prohibit or limit entry into governmental offices for such purposes during working hours.

(Added by Stats.1976, c. 1422, p. —, § 2.)

Very truly yours,

THOMAS M. O'CONNOR
City Attorney



DOCUMENTS

RECEIVED
PUBLIC LIBRARY

April 13, 1977

Business Tax Board of Review
c/o Mr. Roger Boas
Chief Administrative Officer
289 City Hall
San Francisco, CA 94102

Subject: Vacation and Sick Pay Included in Definition of
Compensation for Purposes of Payroll Expense Tax

Dear Mr. Boas:

This is in response to the request of the Business Tax Board of Review for my opinion regarding the inclusion of amounts paid employees for vacation and sick leave in an employer's computation of payroll expense for purposes of the Payroll Expense Tax Ordinance.

Section 2.6 of Payroll Expense Tax Ordinance defines "payroll expense" as follows:

"The term 'Payroll Expense' shall mean the compensation paid, including salaries, wages, commissions and other compensation to an individual who, during any tax year, performs work or renders services, in whole or in part in the City and County of San Francisco; and if more than one individual during any tax year performs work or renders services in whole or in part in the City and County of San Francisco, the term 'Payroll Expense' shall mean the total compensation paid including salaries, wages, commissions and other compensation, to all such individuals."
(Emphasis added.)



Business Tax Board of Review

2

April 13, 1977

The total compensation received by an employee, working in the City and County of San Francisco, must be declared by an employer when computing payroll expenses. In my opinion the ordinance does not differentiate between wages and compensation paid to employees for vacation or sick leave. Furthermore, as the following cases point out, vacation leave payments are deferred wages.

The United States District Court, Southern District of California, Central Division, ruled In Re Capital Service Inc. (1955) 136 F.Supp. 430: "'A vacation with pay is in effect additional wages', In re Public Ledger, 3 Cir. (1947) 161 F.2d 762, 767, quoting from In re Wil-Low Cafeterias Inc., 2 Cir. 1940, 111 F.2d 429, 432."

In the United States v. Munro-Van Helms Co., Fifth Circuit, 1957, 243 F.2d 10, the Court of Appeals stated: "Vacation pay is, by all of the decisions, regarded as wages. 6 Remington on Bankruptcy, 382 §2807."

In Div. Labor 1. Enf. v. Ryan Aero. Co. (1951) 106 C.A. 2d Supp. 833, 836, the court held:

"Decisions have made clear that a contractual provision for vacation with pay is neither a gratuity nor a gift. It is a supplement to the employment agreement which in effect constitutes an offer of reward or additional wages for constant and continuous service. (Citations omitted.)"

Payments for sick leave are not wages, per se. The courts have, however, construed such payments to be a form of compensation. Furthermore, if unused sick leave can be accrued and a cash payment collected by an employee upon termination of employment, the payment takes the form of additional wages. (See Long v. City of Philadelphia, 29 A.2d 243, 245; Eischbein v. Real Estate Management, 31 A.2d 228, 229; Nickey v. Cudahy Packing Co., 33 A.2d 285, 286.

In my opinion, the Payroll Expense Tax Ordinance requires



Business Tax Board of Review 3

April 13, 1977

an employer to include in his computation of payroll expense all compensations paid to employees working within the City and County of San Francisco, except as excluded by Sections 4, 5, or 6 of the Payroll Expense Tax Ordinance. Payments received by an employee for vacation or sick leave are compensation under the ordinance's definition of "payroll expense."

Very truly yours,

THOMAS M. O'CONNOR
City Attorney

Page 2 of 2

Page 2 of 2

Page 2 of 2

Page 2 of 2

Page 2 of 2

Page 2 of 2

17
-11
SF City Attorney

Letter Opinion No. 77-11

May 13, 1977

Mr. Gilbert H. Boreman
Clerk of the Board
Board of Supervisors
235 City Hall
San Francisco, California 94102

Subject: Effect of Contempt Judgment; Sheriff Richard D.
Hongisto

Dear Mr. Boreman:

By recent letter, on behalf of a member of the Board of Supervisors, you inquire as to the legal consequences of a Superior Court judgment finding that Sheriff Richard Hongisto was in contempt of court.

Specifically, the questions posed by your letter are:

". . . [W]hether the judgment in this . . . [contempt] . . . case disqualifies Sheriff Hongisto from holding office. The Supervisor would also appreciate receiving information as to Charter provisions which are deemed to apply in this case, and what procedures thereunder would need to be followed to declare the office of Sheriff vacant, as well as actions which should be taken by the Mayor, the Board of Supervisors, or by both the Mayor and the Board. The Supervisor inquires whether the judgment of contempt of court would constitute official misconduct under Charter Section 8.107 or other pertinent statute."

You are advised that:

100-1000

100-1000

100-1000

100-1000

Mr. Gilbert H. Boreman

2

May 13, 1977

1. The contempt judgment does not disqualify Sheriff Hongisto from holding office. It does not constitute conviction of (a) an offense or (b) a crime under Charter § 8.104.

2. The pertinent Charter provisions are §§ 8.104, 8.106 and 8.107, discussed below.

3. The required procedure for the office of Sheriff to become vacant, under the circumstances here, would be that provided by Charter § 8.107, quoted below.

4. The actions thereunder which should be taken by the Mayor and Board of Supervisors (assuming the Mayor chose to suspend the Sheriff and file charges of official misconduct, and assuming the Board chose to sustain them) are: The Mayor would have to suspend the Sheriff and appoint a qualified person to discharge the duties of that official during the suspension. In suspending the Sheriff the Mayor would be required immediately, in writing, to notify the Board of Supervisors thereof and the cause therefor, and present written charges against him at or prior to the Board's next regular meeting following the suspension, and immediately furnish a copy to the Sheriff who would be entitled to appear with counsel before the Board and defend himself. Not less than 5 days (and not more than 30 days) after the filing by the Mayor with the Board of his charges, the Board would have to hold a hearing on them. If by vote of not less than 9 Supervisors the Mayor's charges are deemed sustained, the Sheriff would be removed from office. If the charges are not so sustained, or if the Board should not act on the Mayor's charges within 30 days after their filing, the Sheriff would have to be reinstated.

5. The Mayor is under no duty to suspend the Sheriff and present charges. The Board is under no duty to sustain the Mayor's charges, or even to act on them.

6. If the Mayor chose to suspend the Sheriff and present charges, the contempt judgment would not ipso facto constitute official misconduct, or conclusive evidence of official misconduct, under Charter § 8.107, or under any other pertinent statute. It would still be for 9 Board members to determine whether Sheriff Hongisto was guilty of official misconduct. The contempt judgment is conclusive

The first part of the paper is devoted to the study of the

properties of the function $f(x)$ defined by the equation

$$f(x) = \int_0^x \frac{1}{1+t^2} dt$$

and to the study of the function $F(x)$ defined by the equation

$$F(x) = \int_0^x \frac{1}{1+t^2} dt$$

and to the study of the function $G(x)$ defined by the equation

$$G(x) = \int_0^x \frac{1}{1+t^2} dt$$

and to the study of the function $H(x)$ defined by the equation

$$H(x) = \int_0^x \frac{1}{1+t^2} dt$$

and to the study of the function $I(x)$ defined by the equation

$$I(x) = \int_0^x \frac{1}{1+t^2} dt$$

and to the study of the function $J(x)$ defined by the equation

$$J(x) = \int_0^x \frac{1}{1+t^2} dt$$

and to the study of the function $K(x)$ defined by the equation

$$K(x) = \int_0^x \frac{1}{1+t^2} dt$$

Mr. Gilbert H. Boreman

3

May 13, 1977

only of the fact that Sheriff Hongisto was guilty of contempt in violating a valid court order in Superior Court action 682-382.

Text of the pertinent Charter provisions, and discussion, follow.

Applicable Charter provisions are as follows:

"8.104 Vacancies

An office becomes vacant when the incumbent thereof dies, resigns, is adjudged insane, convicted of a crime involving moral turpitude, or of an offense involving a violation of his official duties, or is removed from office, or ceases to be a resident of the city and county, or neglects to qualify within the time prescribed by law, or within twenty days after his election or appointment, or shall have been absent from the state without leave for more than sixty consecutive days."

"8.106 Penalty for Official Misconduct

Any person found guilty of official misconduct shall forfeit his office, and shall be forever after debarred and disqualified from being elected, appointed or employed in the service of the city and county."

"8.107 Suspension and Removal

Any elective officer, and any member of the civil service commission or public utilities commission or school board may be suspended by the mayor and removed by the board of supervisors for official misconduct, and the mayor shall appoint a qualified person to discharge the duties of the office during the period of suspension. On such suspension, the mayor shall immediately notify the supervisors thereof in writing and the cause therefor, and shall present written charges against such suspended officer to the board of supervisors at or prior to its next regular meeting following such suspension, and shall immediately furnish copy of same to such officer, who shall have the right to appear with counsel before the board in his defense.

THE UNIVERSITY OF CHICAGO

DEPARTMENT OF THE HISTORY OF ARTS AND ARCHITECTURE

RECEIVED BY THE DEPARTMENT OF THE HISTORY OF ARTS AND ARCHITECTURE

ON THE 10th DAY OF MAY 1961

FROM THE LIBRARY OF THE UNIVERSITY OF CHICAGO

THE UNIVERSITY OF CHICAGO PRESS
54 EAST LAKE STREET
CHICAGO, ILLINOIS 60601
U.S.A.
LONDON: ROUTLEDGE AND KEGAN PAUL
11 BEDFORD SQUARE
LONDON, W.C.1

THE UNIVERSITY OF CHICAGO PRESS
54 EAST LAKE STREET
CHICAGO, ILLINOIS 60601
U.S.A.
LONDON: ROUTLEDGE AND KEGAN PAUL
11 BEDFORD SQUARE
LONDON, W.C.1

THE UNIVERSITY OF CHICAGO PRESS
54 EAST LAKE STREET
CHICAGO, ILLINOIS 60601
U.S.A.
LONDON: ROUTLEDGE AND KEGAN PAUL
11 BEDFORD SQUARE
LONDON, W.C.1

Mr. Gilbert H. Boreman

4

May 13, 1977

Hearing by the supervisors shall be held not less than five days after the filing of written charges. If the charges are deemed to be sustained by not less than a three-fourths vote of all members of the board, the suspended officer shall be removed from office; if not so sustained, or if not acted on by the board of supervisors within thirty days after the filing of written charges, the suspended officer shall thereby be reinstated.

"The mayor must immediately remove from office any elective official convicted of a crime involving moral turpitude, and failure of the mayor to so act shall constitute official misconduct on his part."

The final paragraph of Charter § 8.107 is omitted because it does not relate to elective officers, but only to appointees of the Mayor.

The sheriff is a county officer (Pitchess v. Superior Court, (1969) 2 Cal.App.3d 653, 657). His appointment and removal, and the filling of vacancies in his office, are provided for by charter, and the charter supersedes conflicting state laws in this matter (Calif. Const. art. XI, §§ 3(a), 4(c), 4(e)), and 6(b).) Thus, although vacancies in office are generally covered by Gov.C. § 1770, section 8.104 of the Charter supersedes § 1770 and constitutes the procedure for creating vacancies in county offices in San Francisco (Pearson v. County of Los Angeles, (1957) 49 Cal.2d 523, 536).

For like reasons, Gov.C. § 3060, et seq., relating to removal from office for wilful or corrupt misconduct in office by the grand jury, is not applicable. (Curphey v. Superior Court, (1959) 164 Cal.App.2d 261.)

While there is some thought that the Charter language supersedes state law only with respect to the procedure for removal to be followed, and that the state retains the power to prescribe qualifications for county officers, the only pertinent language in Gov.C. § 1770 is in paragraph (h), listing one of the events upon which a vacancy occurs as "His conviction . . . of any offense involving a violation of his official duties", which is the same language as appears in Charter § 8.104. The construction placed on that

TO THE PRESIDENT OF THE UNIVERSITY OF CHICAGO

FROM THE FACULTY OF THE UNIVERSITY OF CHICAGO

RESOLUTION OF THE FACULTY

ON THE MATTER OF THE

RECOMMENDATION OF THE

COMMISSION ON THE

REORGANIZATION OF THE

UNIVERSITY OF CHICAGO

AND THE

RECOMMENDATION OF THE

COMMISSION ON THE

REORGANIZATION OF THE

UNIVERSITY OF CHICAGO

AND THE

Mr. Gilbert H. Boreman

5

May 13, 1977

language in this opinion would be the same whether one is construing the state law or the charter language.

To the extent this opinion relies on factual matters, the facts stated have been taken from records of the Superior Court and the Board of Supervisors and have not been independently verified by this office; consequently, this opinion is based on the assumption that those facts are true.

On January 10, 1977, Superior Court Judge John E. Benson adjudged Sheriff Hongisto to be

"guilty of contempt under Code of Civil Procedure Section 1209(3) and 1209(5), in violating a valid Order of this Court, specifically a writ of execution issued on September 23, 1976, by the Honorable Ira A. Brown, Jr., Judge of the Superior Court . . ."

The writ of execution referred to, as well as the contempt judgment, was issued in the case of Four Seas Investment Corp. v. International Hotel Tenants' Ass'n, et al., No. 682-382. The proceedings in that case were in the nature of unlawful detainer under Sections 1161, et seq., of the Code of Civil Procedure (CCP). The judgment provided that the plaintiff (Four Seas) recover possession of the International Hotel at 848 Kearney Street, San Francisco.

Judgment was entered on June 28, 1976. The writ of execution, issued on September 23, 1976, directed the Sheriff to place Four Seas in possession of the premises and to make return of the writ before November 30, 1976. The Sheriff did not execute the writ, but made a return of the writ showing this fact. Thereupon, Four Seas obtained an Order to Show Cause Re Contempt, alleging a wilful failure to obey the writ. In response, the Sheriff claimed that he had diligently and in good faith attempted to prepare for a proper eviction, and further alleged that he lacked enough qualified personnel to accomplish the eviction taking into account the anticipated difficulties of such a project and that preparations and training were hampered by lack of funds for overtime.

On January 10, 1977, after a trial, Judge Benson found the Sheriff in contempt and ordered that he be confined in

1880-1881

1880-1881

1880-1881

1880-1881

1880-1881

1880-1881

1880-1881

1880-1881

1880-1881

1880-1881

1880-1881

1880-1881

1880-1881

1880-1881

1880-1881

1880-1881

1880-1881

Mr. Gilbert H. Boreman

6

May 13, 1977

jail for five days and pay a fine of \$500. Trial and judgment were had under the applicable sections of the Code of Civil Procedure, and not under Penal Code § 166, declaring certain types of contempt to be crimes.

During the period from September 23 to November 30, 1976, attempts were made to avert the necessity of eviction by providing for the acquisition of the premises by the San Francisco Housing Authority for low-income housing. To this end, the Board of Supervisors passed Resolutions Nos. 945-76 and 946-76 on November 30, 1976, approving the International Hotel site for low-income housing and authorizing the use of contingency funds for its acquisition. The Housing Authority has begun the process of acquiring the premises by eminent domain.

The bases for removal from office set forth in Charter Sections 8.104, 8.106, and 8.107 reduce themselves to two: conviction of specific types of crime, a function of the courts, or a finding of official misconduct, a function of the Mayor and Board of Supervisors.

In the case of conviction of an elective official of a crime involving moral turpitude, the Mayor must immediately remove him from office. The required action is mandatory, for if the Mayor fails to so act, Charter Section 8.107 declares such failure to be "official misconduct" on his part.

Does the Judgment and Order In Re Contempt dated January 10, 1977, constitute a conviction of a "crime involving moral turpitude" (Charter Sections 8.104 and 8.107), or "of an offense involving a violation of his official duties"?

The answer is in the negative to both questions.

The power of a court to punish for contempt is said to be inherent and is of ancient origin. It has a twofold aspect, namely, the proper punishment of the guilty party for his disrespect to the court or its order, and secondly to compel his performance of some act or duty required of him by the court, which he refuses to perform. The first of the two classes is criminal and punitive in its nature, and the government, the courts and the people are interested in the prosecution of such contempts. The second of the two

The first of these is the question of the origin of the human race. It is generally accepted that the human race originated in Africa, and that it spread from there to other parts of the world. This is supported by the fact that the greatest variety of human races is found in Africa, and that the fossil remains of early man are found there. The second question is the question of the development of the human race. It is generally accepted that the human race has developed from a common ancestor, and that it has evolved into the various races that we see today. This is supported by the fact that all races of man share certain characteristics, and that the differences between them are the result of adaptation to different environments.

The third question is the question of the future of the human race. It is generally accepted that the human race will continue to evolve, and that it will develop into a more advanced state than it is at present. This is supported by the fact that the human race has a great capacity for learning and for adapting to new environments, and that it has a great capacity for creating and using tools. The fourth question is the question of the relationship between the human race and the other races of the animal kingdom. It is generally accepted that the human race is a part of the animal kingdom, and that it is related to the other races of the animal kingdom. This is supported by the fact that the human race shares certain characteristics with the other races of the animal kingdom, and that it has evolved from a common ancestor with them.

The fifth question is the question of the role of the human race in the world. It is generally accepted that the human race has a great role to play in the world, and that it is responsible for the progress of the world. This is supported by the fact that the human race has created a great many of the things that we see and use today, and that it has made great progress in the knowledge of the world. The sixth question is the question of the rights of the human race. It is generally accepted that the human race has certain rights, and that it is entitled to certain freedoms. This is supported by the fact that the human race has a great capacity for creating and using tools, and that it has a great capacity for learning and for adapting to new environments. The seventh question is the question of the duties of the human race. It is generally accepted that the human race has certain duties, and that it is responsible for certain things. This is supported by the fact that the human race has a great capacity for creating and using tools, and that it has a great capacity for learning and for adapting to new environments.

Mr. Gilbert H. Boreman

7

May 13, 1977

classes is civil, remedial and coercive in its nature, and the parties chiefly in interest in the prosecution are the individuals whose private rights and remedies are sought to be protected or enforced (In re Morris (1924) 194 Cal. 63; and Morelli v. Superior Court (1969) 1 Cal.3d 328). Although the first of the two classes of contempt is said to be "criminal in nature", such a contempt is not a crime.

In support of the conclusion thus reached it is noted that Sheriff Hongisto was found guilty of contempt under C.C.P. Section 1209(3) and 1209(5), reading as follows:

"The following acts or omissions in respect to a court of justice, or proceedings therein, are contempts of the authority of the court: . . .

"3. Misbehavior in office, or other wilful neglect or violation of duty by an attorney, counsel, clerk, sheriff, coroner, or other person, appointed or elected to perform a judicial or ministerial service; . . .

"5. Disobedience of any lawful judgment, order, or process of the court; . . ."

A proceeding brought under C.C.P. § 1209 through 1222, as distinguished from those prosecuted under Penal Code § 166, ". . . is not a criminal action or proceeding. It is a special proceeding, criminal in character, governed by the provisions of the Code of Civil Procedure, not by those of the Penal Code; not for the punishment of an offense against the state, but intended to implement the inherent power of the court to conduct the business of the court and enforce the lawful orders of the court." (Pacific Tel. & Tel. Co. v. Superior Court, (1968) 265 Cal.App.2d 370, 371 (citing Oil Workers Int'l Union v. Superior Court, (1951) 103 Cal.App.2d 512, 570; In re Morris, (1924) 194 Cal. 63, 68-69; and Bridges v. Superior Court, (1939) 14 Cal.2d 464, 473-477, reversed on other grounds sub.nom. Bridges v. California, (1941) 314 U.S. 252). Moreover, the Superior Court has no jurisdiction to prosecute a misdemeanor under Penal Code Section 166 (In re McKinney (1968) 70 Cal.2d 8).

The distinction here drawn between a criminal action or proceeding, and "a special proceeding, criminal in character" is no mere legal sophistry, but has important consequences.

THE JOURNAL OF THE
ROYAL ANTHROPOLOGICAL INSTITUTE
VOLUME LXXV. PART I. 1945.
CONTENTS.

THE JOURNAL OF THE
ROYAL ANTHROPOLOGICAL INSTITUTE
VOLUME LXXV. PART I. 1945.
CONTENTS.

THE JOURNAL OF THE
ROYAL ANTHROPOLOGICAL INSTITUTE
VOLUME LXXV. PART I. 1945.
CONTENTS.

THE JOURNAL OF THE
ROYAL ANTHROPOLOGICAL INSTITUTE
VOLUME LXXV. PART I. 1945.
CONTENTS.

THE JOURNAL OF THE
ROYAL ANTHROPOLOGICAL INSTITUTE
VOLUME LXXV. PART I. 1945.
CONTENTS.

THE JOURNAL OF THE
ROYAL ANTHROPOLOGICAL INSTITUTE
VOLUME LXXV. PART I. 1945.
CONTENTS.

Mr. Gilbert H. Boreman

8

May 13, 1977

For example, an accused under C.C.P. §§ 1209 through 1222 has no right to a jury trial (Bridges v. California, *supra*), otherwise guaranteed under Article I Section 16 of the California Constitution; nor, under the Sixth Amendment and Fourteenth Amendment of the United States Constitution, because a charge of contempt under C.C.P. § 1209 is a "petty" offense (Pacific Tel. & Tel. Co. v. Superior Court, *supra*); nor has he a right to appeal a judgment finding him in contempt, but must follow the more limited remedies of habeas corpus, prohibition or certiorari (Heller v. Heller, (1964) 230 Cal.App.2d 679).

That a judgment of contempt under Section 1209 is not a finding of guilt of a "public offense" is further demonstrated by the language of Penal Code Section 689, which reads:

"No person can be convicted of a public offense unless by verdict of a jury, accepted and recorded by the court, by a finding of the court in a case where a jury has been waived, or by a plea of guilty."

To further buttress the conclusions that a judgment of contempt under C.C.P. 1209, et seq., is not a conviction of a crime or an offense¹, the Legislature has specifically provided that the commission of certain forms of contempt are, indeed, crimes.

Penal Code Section 166 provides as follows:

"Every person guilty of any contempt of court, of either of the following kinds, is guilty of a misdemeanor:

1. Disorderly, contemptuous, or insolent behavior committed during the sitting of any court of justice, in immediate view and presence of the court, and directly tending to interrupt its proceedings or to impair the respect due to its authority;

1 "Crime" and "offense" are virtually synonymous. Penal Code Sections 15, 16.

Mr. Gilbert H. Boreman

9

May 13, 1977

2. Behavior of the like character committed in the presence of any referee, while actually engaged in any trial or hearing, pursuant to the order of any court, or in the presence of any jury while actually sitting for the trial of a cause, or upon any inquest or other proceedings authorized by law;

3. Any breach of the peace, noise, or other disturbance directly tending to interrupt the proceedings of any court;

4. Willful disobedience of any process or order lawfully issued by any court;

5. Resistance willfully offered by any person to the lawful order or process of any court;

6. The contumacious and unlawful refusal of any person to be sworn as a witness; or, when so sworn, the like refusal to answer any material question;

7. The publication of a false or grossly inaccurate report of the proceedings of any court;

8. Presenting to any court having power to pass sentence upon any prisoner under conviction, or to any member of such court, any affidavit or testimony or representation of any kind, verbal or written, in aggravation or mitigation of the punishment to be imposed upon such prisoner, except as provided in this code."

It is noteworthy that violation of the duty of a sheriff under C.C.P. § 1209(3), to perform a judicial or ministerial service is not made a crime under Penal Code Section 166.

That the judgment of contempt was not the equivalent of conviction of a crime or offense is further indicated by the fact that the contempt proceeding in question was prosecuted as a part of a civil action (Four Seas Investment Corporation v. International Hotel Tenants' Association, et al., Superior Court No. 682-382). To gain a conviction of a crime, the action must be brought in the name of the People of the State of California, as a party, against the person charged

The following is a summary of the main findings of the study. The results show that the use of the new method significantly improved the accuracy of the measurements. The data indicates that the new method is more reliable than the traditional method, especially in cases where the measurements are taken in a noisy environment. The study also found that the new method is easier to use and requires less time to complete the measurements. These findings suggest that the new method could be a valuable tool for researchers in the field of medicine.

The study was conducted in a laboratory setting. The participants were divided into two groups: a control group and an experimental group. The control group used the traditional method, while the experimental group used the new method. The results of the study are presented in the following table. The table shows that the experimental group achieved significantly higher accuracy than the control group. This suggests that the new method is more effective than the traditional method.

The study also found that the new method is more consistent than the traditional method. The results show that the measurements taken using the new method are more stable and less variable than those taken using the traditional method. This is an important finding because it indicates that the new method is more reliable and can be used with confidence in clinical settings. The study also found that the new method is more user-friendly than the traditional method. The participants in the experimental group found the new method easier to use and more comfortable than the traditional method.

The study was limited by several factors. First, the study was conducted in a laboratory setting, which may not reflect the results in a clinical setting. Second, the study only compared the new method to the traditional method, and did not compare it to other methods. Third, the study only measured accuracy and consistency, and did not measure other factors such as time and cost. Despite these limitations, the study provides valuable information about the new method and its potential applications in the field of medicine. The results suggest that the new method is a promising tool for researchers and clinicians alike.

Mr. Gilbert H. Boreman

10

May 13, 1977

with the offense (Penal Code Section 684; Cf. In re Morris, supra and see Morton v. Broderick (1897) 118 Cal. 474).

There having been no conviction of the Sheriff of a "crime" or "offense", there is, a fortiori, no conviction of a crime involving moral turpitude. Further, there being no conviction of such a crime, the office of Sheriff is not "vacant" under Charter Section 8.104, nor is the condition precedent to the mandatory duty imposed on the Mayor under the second paragraph of Charter Section 8.107 fulfilled. Accordingly, there is no requirement that the Mayor immediately remove the Sheriff from office. Indeed, without fulfillment of the condition precedent, the Mayor is without power to so remove the Sheriff from office.

PROCEDURES NECESSARY FOR REMOVAL
FOR OFFICIAL MISCONDUCT

As has already been indicated, conviction of an elected officer for a crime involving moral turpitude, imposes a mandatory duty upon the Mayor to remove the miscreant from office (Charter § 8.107). By contrast, removal of an elective officer for official misconduct is based on discretionary action by both the Mayor and the Board of Supervisors, neither of whom may exercise the power of removal without the concurrence of the other (4 McQuillin, Municipal Corporations, § 12.233c). The procedural steps are initiated by the Mayor. He may suspend any elective officer for official misconduct, with immediate notification to the Board of Supervisors. The Board may remove any elective officer for official misconduct, but only on written charges presented by the Mayor, and a hearing by the Board on the charges, sustained by not less than a three-fourths vote of all members of the Board. If the Mayor does not determine in the first instance that an elective officer has committed official misconduct, suspend him, and present written charges, the Board is without power to proceed in the matter.

Your final question is whether the judgment of contempt would constitute official misconduct under Charter § 8.107, or other pertinent statute. Previously, in this letter we have pointed out that the removal of an elective officer of the City and County is governed by the Charter, consequently there is no other statute pertinent to the inquiry.

Mr. Gilbert H. Boreman

11

May 13, 1977

Whether official misconduct exists is a mixed question of law and fact, which in the first instance is to be decided by the Mayor. However that question is decided by him, it would appear to be a discretionary decision immune from attack in the courts (Cf. Wilson v. Sharp (1954) 42 Cal.2d 675; Ascherman v. Bales (1969) 273 Cal.App.2d 707). Both Wilson and Ascherman uphold the traditional independence from interference by the courts of a district attorney in declining to prosecute a civil or a criminal case, if in his unfettered judgment the facts and evidence available to him do not warrant such prosecution. The Mayor's role in initiating removal of an elected officer for official misconduct under Charter § 8.107 is so analogous to that of a public prosecutor that the Mayor's decision either to pursue removal proceedings for official misconduct or to decide that, under all the facts available to him, such proceedings are not warranted is not subject to judicial review.

In like manner, assuming that the Mayor suspended an elective officer for official misconduct and the matter was heard before the board, supervisorial discretion under § 8.107 is such that a supervisor could not be required to vote for dismissal any more than a juror in a criminal case can be required to vote for conviction irrespective of the strength of the evidence.

Research has disclosed no case where a sheriff has been removed from office for official misconduct based on a judgment of contempt such as the one under discussion. The removal of a sheriff for one instance of failure to pursue a criminal investigation and wilful concealment of the offense from the juvenile authorities and district attorney has been upheld (People v. Mullin (1961) 197 Cal.App.2d 479). That case appears unique and would probably not be controlling here on what constitutes "official misconduct" under Charter §§ 8.106 and 8.107.

In violation of an ordinance, a Los Angeles city councilman drove a city-owned car on a personal pleasure trip of some 4000 miles. He was charged with wilful misconduct and his removal from office was upheld (People v. Harby (1942) 51 Cal.App.2d 759). In Harby, there is an element of corrupt personal gain that does not parallel the action of the Sheriff under the facts previously set forth in this opinion.

The Journal of the American Society of Plant Physiologists (ASPP) is a peer-reviewed scientific journal that publishes original research papers, reviews, and short communications in the field of plant physiology. The journal is published quarterly and is one of the leading journals in the field. The ASPP is a non-profit organization that promotes the advancement of plant physiology through research, education, and public outreach. The journal is published by the American Society of Plant Physiologists, which is a member of the American Society of Plant Biologists (ASPB).

The journal is published by the American Society of Plant Physiologists, which is a member of the American Society of Plant Biologists (ASPB). The journal is published quarterly and is one of the leading journals in the field. The ASPP is a non-profit organization that promotes the advancement of plant physiology through research, education, and public outreach. The journal is published by the American Society of Plant Physiologists, which is a member of the American Society of Plant Biologists (ASPB).

The journal is published by the American Society of Plant Physiologists, which is a member of the American Society of Plant Biologists (ASPB). The journal is published quarterly and is one of the leading journals in the field. The ASPP is a non-profit organization that promotes the advancement of plant physiology through research, education, and public outreach. The journal is published by the American Society of Plant Physiologists, which is a member of the American Society of Plant Biologists (ASPB).

The journal is published by the American Society of Plant Physiologists, which is a member of the American Society of Plant Biologists (ASPB). The journal is published quarterly and is one of the leading journals in the field. The ASPP is a non-profit organization that promotes the advancement of plant physiology through research, education, and public outreach. The journal is published by the American Society of Plant Physiologists, which is a member of the American Society of Plant Biologists (ASPB).

The journal is published by the American Society of Plant Physiologists, which is a member of the American Society of Plant Biologists (ASPB). The journal is published quarterly and is one of the leading journals in the field. The ASPP is a non-profit organization that promotes the advancement of plant physiology through research, education, and public outreach. The journal is published by the American Society of Plant Physiologists, which is a member of the American Society of Plant Biologists (ASPB).

Mr. Gilbert H. Boreman

12

May 13, 1977

In the Memorandum Opinion in Joseph P. Mazzola v. City and County of San Francisco, Superior Court No. 713-522, Judge Benson had occasion to discuss the meaning of "official misconduct" (and equivalent language, "misconduct in office") in deciding that such language is not unconstitutionally vague and uncertain. His opinion states, in part:

"While it is conceded that there exists no single definition as to what constitutes 'official misconduct', this is not surprising when one considers the infinite variety of wrongs which could potentially be committed by an erring public officer. This thought finds expression in Craig vs. Jensen, 278 N.W. 545, 549 (South Dakota Supreme Court):

"The term 'misconduct in office' is a general term, and, so far as we can determine, has no well defined meaning. The misconduct sufficient to justify a removal must be a misconduct in the conduct of the office, but just what constitutes misconduct is difficult of definition. The term itself implies as much as any definition of the term. It has been defined as 'such acts as amount to a breach of the good faith and right action that are tacitly required of all officers, (citations)' or, 'any act which is contrary to justice, honesty, principle, or good morals, if performed by virtue of office or by authority of office (citations).' Other definitions might be found, but none of them are very helpful. We think misconduct in office means simply the doing of something which the officer ought not to do, or the failure to do something which he ought to do, in the conduct of his office. Each case must rest on its own facts.'"

Thus the good faith and propriety of the acts in question would be relevant considerations by the Mayor in whether to suspend and bring charges and by the Board of Supervisors in deciding any proceeding under Section 8.107. Another consideration, though not conclusive, is that the Sheriff's failure to carry out the writ of execution was supportive of that which became the express policy of the Board on November 30, 1976, i.e., to acquire the International Hotel for low income housing (Board Resolutions 945-76 and 946-76). In

The following information is provided for your information:

1. The first section of the document contains the following information:

2. The second section of the document contains the following information:

3. The third section of the document contains the following information:

Mr. Gilbert H. Boreman

13

May 13, 1977

this connection, the Mazzola matter can be readily distinguished in that, as Judge Benson stated in the opinion previously cited,

" . . . the tactic employed while intended to result in benefit to one of petitioner's principals, Local 38, was at the same time working to the severe detriment of petitioner's other principal, the City's government and public he was sworn to serve."

These considerations are a part of the mixed questions of law and fact, to be resolved in the first instance by the Mayor, and if a hearing results before the Board of Supervisors, by that body.

You are so advised.

Very truly yours,

THOMAS M. O'CONNOR
City Attorney

THE JOURNAL OF THE ROYAL SOCIETY OF MEDICINE, LONDON, 1901. PUBLISHED BY THE SOCIETY, 1, BEDFORD SQUARE, W.C.1.

THE JOURNAL OF THE ROYAL SOCIETY OF MEDICINE, LONDON, 1901. PUBLISHED BY THE SOCIETY, 1, BEDFORD SQUARE, W.C.1.

THE JOURNAL OF THE ROYAL SOCIETY OF MEDICINE, LONDON, 1901. PUBLISHED BY THE SOCIETY, 1, BEDFORD SQUARE, W.C.1.

THE JOURNAL OF THE ROYAL SOCIETY OF MEDICINE, LONDON, 1901. PUBLISHED BY THE SOCIETY, 1, BEDFORD SQUARE, W.C.1.

THE JOURNAL OF THE ROYAL SOCIETY OF MEDICINE, LONDON, 1901. PUBLISHED BY THE SOCIETY, 1, BEDFORD SQUARE, W.C.1.

47
3
-12

SF City Attorney

Letter Opinion No. 77-12

May 18, 1977

Mr. Gilbert H. Boreman, Clerk
Board of Supervisors
235 City Hall
San Francisco, Calif.

Subject: Propositions "A" and "B" on August 2,
1977 Special Election Ballot; Legal
Effect if Both Propositions Approved
by Voters

Dear Mr. Boreman:

This is in response to your letter of May 10, 1977 wherein you request an opinion as to what would be the legal effect in the event that both of the currently certified initiative Charter amendments are approved by the voters at the August 2, 1977 Special Election and one measure receives more votes than the other.

The two proposed initiative Charter amendments to be submitted to the electorate at the Special Election have been designated Propositions "A" and "B" respectively. Both measures relate to the method by which, the times at which and the terms for which the several officers of the City and County shall be elected or appointed, pursuant to the authority granted under Article XI, Section 5(b), of the State Constitution. In this respect, Proposition "A" amends Sections 2.100 and 9.100 of the Charter so as to provide that the method by which the Mayor, the Supervisors, Assessor, District Attorney, City Attorney, Sheriff, Treasurer, Public Defender and the members of the

THE HISTORY OF THE

THE HISTORY OF THE

THE HISTORY OF THE

THE HISTORY OF THE

THE HISTORY OF THE

THE HISTORY OF THE

Mr. Gilbert H. Boreman

2

May 18, 1977

Board of Education are to be elected shall be at large; that the times at which the aforesaid officers are to be elected is as follows:

Mayor, six (6) Supervisors, a District Attorney and a Sheriff in 1943, and every fourth year thereafter (thus the most recent election for these offices was held in 1975 and the next election for these offices will be in 1979): five (5) Supervisors, City Attorney and Treasurer in 1945, and every fourth year thereafter (thus the next election for these offices will be in 1977); Assessor and Public Defender in 1942, and every fourth year thereafter; seven (7) members of the Board of Education in 1972; three (3) of said members in 1974 (to succeed those receiving a two (2) year term in 1972); four (4) of said members in 1976, and every fourth year thereafter (to succeed those receiving a four (4) year term in 1972); and three (3) of said members in 1978, and every fourth year thereafter; that the terms of all the aforesaid officers shall be four (4) years, except that the three (3) Board of Education members receiving the lowest vote, respectively, at the 1972 election shall be for two (2) years.

In this same respect, Proposition "B" amends Section 2.100, repeals Sections 9.100 and 9.100-1 and adds a new Section 9.100 so as to provide that the method by which the Supervisors are to be elected shall be at large with a requirement that they reside in a district (the City and County is divided into eleven (11) supervisorial districts for this purpose); each Supervisor must receive a majority of all votes cast for candidates from his or her district at either the general election or at a subsequent runoff election; the Mayor, District Attorney, City Attorney, Sheriff and Treasurer are to be elected at large by a majority of all votes cast for the respective office at either the general election or at a subsequent runoff election; the Assessor, Public Defender and members of the Board of Education are to be elected at large; that the times at which the aforesaid officers are to be elected is as follows:

THE JOURNAL OF THE AMERICAN MEDICAL ASSOCIATION PUBLISHED WEEKLY 535 N. Dearborn Ave., Chicago 10, Ill. Subscription price, \$5.00 per annum in advance

Published for the American Medical Association by the American Medical Association, 535 N. Dearborn Ave., Chicago 10, Ill.
Copyright, 1937, by American Medical Association
Second-class postage paid at Chicago, Ill.
Acceptance for mailing at special rate of postage provided for in Post Office Department Regulation 110, approved October 3, 1917. Authorization to mail at this rate granted January 1, 1936.
Postmaster: Send address changes in this journal to JOURNAL OF THE AMERICAN MEDICAL ASSOCIATION, 535 N. Dearborn Ave., Chicago 10, Ill.

The Journal of the American Medical Association is a weekly publication of the American Medical Association. It is the official journal of the Association and is published for the Association by the American Medical Association, 535 N. Dearborn Ave., Chicago 10, Ill.
The Journal is published weekly, except on Sundays and public holidays. It is published in English and is available to members of the American Medical Association and to other physicians and medical workers.
The Journal contains a variety of articles, including original research, clinical reports, reviews, and news items. It is a valuable source of information for physicians and medical workers.
The Journal is published in a format that is easy to read and understand. It is published in a format that is suitable for use in the office or at home.
The Journal is published in a format that is suitable for use in the office or at home. It is published in a format that is suitable for use in the office or at home.

The Journal of the American Medical Association is a weekly publication of the American Medical Association. It is the official journal of the Association and is published for the Association by the American Medical Association, 535 N. Dearborn Ave., Chicago 10, Ill.
The Journal is published weekly, except on Sundays and public holidays. It is published in English and is available to members of the American Medical Association and to other physicians and medical workers.
The Journal contains a variety of articles, including original research, clinical reports, reviews, and news items. It is a valuable source of information for physicians and medical workers.
The Journal is published in a format that is easy to read and understand. It is published in a format that is suitable for use in the office or at home.
The Journal is published in a format that is suitable for use in the office or at home. It is published in a format that is suitable for use in the office or at home.

Published by the American Medical Association, 535 N. Dearborn Ave., Chicago 10, Ill.

In 1977, the Mayor, District Attorney, City Attorney, Sheriff, Treasurer and eleven (11) Supervisors shall be elected; in 1978, and every fourth year thereafter, the Assessor, Public Defender and three (3) members of the Board of Education shall be elected; in 1979, and every fourth year thereafter, the Mayor, District Attorney, Sheriff and five (5) or six (6) Supervisors (the number of Supervisors is to be determined by lot in 1978) shall be elected; in 1980, and every fourth year thereafter, four (4) members of the Board of Education shall be elected; in 1981, and every fourth year thereafter, the City Attorney, Treasurer and five (5) or six (6) Supervisors (the number to be determined in the 1978 lottery, supra) shall be elected; that the terms of the aforesaid officers shall be as follows: The Mayor, District Attorney and Sheriff, respectively, elected in 1977 shall serve a two (2) year term; five (5) or six (6) of the Supervisors (the number to be determined by lot in 1978) elected in 1977 shall serve a two (2) year term, and the balance (five (5) or six (6)) shall serve a four (4) year term; the City Attorney and Treasurer elected in 1977, and every fourth year thereafter, shall serve a four (4) year term; the Assessor, Public Defender and Board of Education members elected in 1978, and every fourth year thereafter, shall serve a four (4) year term; the Mayor, District Attorney, Sheriff and Supervisors elected in 1979, and every fourth year thereafter, shall serve a four (4) year term; the members of the Board of Education in 1980, and every fourth year thereafter, shall serve a four (4) year term.

In addition, Proposition "B" also provides, with respect to appointive officers, that the Office of Chief Administrative Officer is to be an appointive office and the method of appointment is to be by the Mayor subject to confirmation and approval by a two-thirds (2/3) vote of the Board of Supervisors; that the times at which a

The first part of the report deals with the general situation of the country, and the second part with the details of the various districts. The first part is divided into two sections, the first of which deals with the general situation of the country, and the second with the details of the various districts. The second part is divided into two sections, the first of which deals with the details of the various districts, and the second with the details of the various districts. The first part is divided into two sections, the first of which deals with the general situation of the country, and the second with the details of the various districts. The second part is divided into two sections, the first of which deals with the details of the various districts, and the second with the details of the various districts.

Mr. Gilbert H. Boreman

4

May 18, 1977

Chief Administrative Officer is to be appointed shall be the afternoon of the 8th day of January, 1978, and whenever thereafter the office becomes vacant; that, commencing on January 8, 1978, the term of the Chief Administrative Officer shall be for six (6) years; that the term of the Chief Administrative Officer holding office in the forenoon of January 8, 1978, shall expire on that day; that the offices of members of the Police, Fire, Airports, Social Services, Port, Recreation and Park, Library and Public Utilities Commissions and Board of Permit Appeals are to be appointive offices to be appointed by the Mayor, with appointment to the Airports, Public Utilities and Port Commission being subject to confirmation and approval of the Board of Supervisors; that not less than one (1) woman be appointed to the Airports, Public Utilities and Port Commissions; that the times at which the members of the Police, Fire, Airports, Social Services, Port, Recreation and Park, Library and Public Utilities Commissions and Board of Permit Appeals are to be appointed shall be the afternoon of the 8th day of January, 1978, and whenever thereafter any such office becomes vacant; that, commencing on January 8, 1978, the respective terms of such offices shall be as otherwise provided in the Charter; and that the terms of all members of the Board and Commissions named herein who shall hold office in the forenoon of January 8, 1978 shall expire on said date.

A review of the foregoing clearly demonstrates a conflict in many respects between the provisions of Propositions "A" and "B" insofar as said provisions relate to the method by which, the times at which and the terms for which the several officers of the City and County shall be elected or appointed.

Where there is a conflict in the provisions of two (2) or more proposed Charter amendments approved at the same election, Section ~~5(a)~~ of Article XI of the State Constitution provides that "those of the measure receiving the highest affirmative vote shall prevail." In my opinion, the provisions of Section 3(d) of Article XI are applicable to, and dispositive of, the question raised herein and accordingly, in answer to your question, in the event that both Propositions "A" and "B" are approved by the voters at the August 2, 1977 Special Election, the measure receiving the higher affirmative vote shall prevail.

It has been suggested that this conclusion is proper if Proposition "B" receives the higher vote but a different result

Dear Sir:—I have the honor to acknowledge the receipt of your letter of the 28th inst. and in reply to inform you that the same has been forwarded to the proper authorities for their consideration.

I am, Sir, very respectfully,
Yours truly,
J. H. [Signature]

Enclosed for you are two copies of the report of the committee on the subject of the proposed amendment to the constitution of the American Medical Association, which was adopted at the annual meeting of the Association held at St. Louis, Mo., in 1909. The report is printed in the *Proceedings of the Association*, 1909, and is also published separately in pamphlet form. It is hoped that it will be of interest to you.

I am, Sir, very respectfully,
Yours truly,
J. H. [Signature]

Very truly yours,
J. H. [Signature]

Mr. Gilbert H. Boreman

5

May 18, 1977

should obtain if Proposition "A" receives the higher vote. Proponents of this viewpoint argue that, except for the provisions relating to the method by which, the times at which and the terms for which Supervisors shall be elected, Proposition "A" does not propose to alter the portions of Sections 2.100 and 9.100 of the Charter affected by Proposition "B", that the voters are not deciding to repeal the existing provisions by implication simply to reenact them, or that, in short, Proposition "A" was not setting up the existing provisions in opposition to the changes proposed in Proposition "B". In response to this argument, it should be pointed out that the format of a proposed Charter amendment is set forth in Section 2.24 of the San Francisco Administrative Code as follows:

" . . . Words in the text of the amendment which are proposed as additions to or substitutions for existing charter language shall be printed in bold-face type. Words in the charter text which are sought to be deleted by the amendment shall be printed in light-face type and shall be enclosed by double parenthesis. Appropriate notations explanatory of the types used in the proposal shall precede the text thereof."

The provisions of Section 34461 of the Government Code: "if the governing body causes copies of any proposed charter amendments to be mailed to the voters, (which is the case in the City and County) the text of such proposed charter amendments may show the difference from existing provisions of law by the use of distinguishing type styles," are also pertinent. (See also Section 4084 of the Elections Code relating to the form of an initiative Charter amendment.)

In Willcox v. Edwards, 162 Cal. 455, the Supreme Court held that the effect of the adoption of a constitutional amendment which amends an existing section of said constitution is to repeal or extinguish all provisions of the former section that are not re-enacted in the amended section. (Emphasis added.)

In State ex. rel. Greenlund v. Fulton, 124 N.E. 172, the Supreme Court of Ohio, in sustaining the denial of a writ of mandamus directing the Secretary of State to publish an amendment to the constitution, said, in part:

"The word 'amendment' has different meanings, which are determined by the connection in which it is used. But when used in connection with the Constitution it has obviously a dual meaning, the particular one to be determined by its relationship. An amendment to the Constitution, which is made by the addition of a provision on a new and independent subject,

The first of these is the question of the origin of the human race. It is a question which has been discussed for many years, and has given rise to many different theories. Some of the most prominent of these are the theory of evolution, the theory of creation, and the theory of migration. Each of these theories has its own set of supporters, and each has its own set of arguments in its favor. It is the purpose of this paper to discuss these theories, and to try to determine which one is the most likely to be correct.

The second of these is the question of the development of the human mind. It is a question which has also been discussed for many years, and has given rise to many different theories. Some of the most prominent of these are the theory of innate ideas, the theory of tabula rasa, and the theory of the development of the mind through experience. Each of these theories has its own set of supporters, and each has its own set of arguments in its favor. It is the purpose of this paper to discuss these theories, and to try to determine which one is the most likely to be correct.

The third of these is the question of the development of human society. It is a question which has also been discussed for many years, and has given rise to many different theories. Some of the most prominent of these are the theory of social contract, the theory of the state of nature, and the theory of the development of society through the process of evolution. Each of these theories has its own set of supporters, and each has its own set of arguments in its favor. It is the purpose of this paper to discuss these theories, and to try to determine which one is the most likely to be correct.

The fourth of these is the question of the development of human culture. It is a question which has also been discussed for many years, and has given rise to many different theories. Some of the most prominent of these are the theory of the diffusion of culture, the theory of the independent development of culture, and the theory of the development of culture through the process of evolution. Each of these theories has its own set of supporters, and each has its own set of arguments in its favor. It is the purpose of this paper to discuss these theories, and to try to determine which one is the most likely to be correct.

The fifth of these is the question of the development of human language. It is a question which has also been discussed for many years, and has given rise to many different theories. Some of the most prominent of these are the theory of the divine origin of language, the theory of the natural origin of language, and the theory of the development of language through the process of evolution. Each of these theories has its own set of supporters, and each has its own set of arguments in its favor. It is the purpose of this paper to discuss these theories, and to try to determine which one is the most likely to be correct.

Mr. Gilbert H. Boreman

6

May 18, 1977

is a complete thing in itself, and may be wholly disconnected with other provisions of the Constitution; such amendments, for instance, as the first ten amendments of the Constitution of the United States. These were therein referred to as articles in addition to and amendments of the Constitution.

"Then there is the use of the word 'amendment' as related to some particular article or some section of the Constitution, and it is then used to indicate an addition to, the striking out, or some change in, that particular section. In the former instance the amendment stands by itself, explains itself, and speaks for itself. The legislative body, or the elector, has before him the whole subject upon which he is to act. But in the latter instance it may be essential for the elector to have before him the section which is proposed to be added to or subtracted from. If he is to vote intelligently, he must have this knowledge. Otherwise, in many instances he would be required to vote in the dark. But when the particular section, with the additions or subtractions shown therein, is before the elector, this completed result becomes the amendment upon which he expresses his choice.

"The procedure thus indicated was followed in this case. In the matter of the amendment proposed by the General Assembly the entire section 2 of article 12, as amended, was printed upon the ballots, in addition to being published as required by the Constitution, and upon the ballot there was stated, in parenthesis, 'New Matter in Capitals,' and the new matter was designated by capitals as stated. Every elector who voted upon that proposition had before him, when he voted, the entire section of the Constitution as it would read if the proposal were adopted, and when the 479,000 electors voted in favor of it they stated as clearly as any one can state that they desired that the Constitution itself should include the provisions stated on the ballot."

Based upon the foregoing, I must conclude that the arguments advanced by the proponents of the aforesaid suggestion, although ingenious, are not persuasive.

Mr. Gilbert H. Boreman

7

May 18, 1977

In summary, therefore, may I repeat that it is my opinion that, in the event both Propositions "A" and "B" are approved by the voters at the Special Election to be held on August 2, 1977, the measure receiving the higher affirmative vote shall prevail.

Very truly yours,

THOMAS M. O'CONNOR
City Attorney

PHILOSOPHY 101: INTRODUCTION TO PHILOSOPHY
Lecture 1: The Nature of Philosophy
The course will explore the history and development of philosophy, from ancient Greek thought to modern analytic philosophy. We will focus on the central questions of philosophy, such as the nature of reality, knowledge, and the self.

Readings: Plato, *The Republic*; Aristotle, *Nicomachean Ethics*; Descartes, *Meditations on First Philosophy*; Kant, *Groundwork of the Metaphysics of Morals*; Wittgenstein, *Tractatus Logico-Philosophicus*.

Assignments: Students will be required to read the assigned texts and write a paper on a topic related to the course. There will also be a final exam.

Office Hours: The professor will hold office hours on Tuesdays, 10:00-12:00, in the Philosophy Department building.

Contact: For more information, please contact the Philosophy Department at (773) 936-8300.

Website: The Philosophy Department website is located at <http://www.philosophy.uchicago.edu>.

Admission: The course is open to all students, regardless of their background or previous experience with philosophy.

Grading: The course is graded on a pass/fail basis. Students who complete the course with a passing grade will receive credit for the course.

20 May 1977

DOCUMENTS

SAN FRANCISCO
PUBLIC LIBRARY

Mr. Gilbert H. Boreman, Clerk
Board of Supervisors
235 City Hall
San Francisco, CA 94102

Subject: Determination of Adjustments to be as of July 1, 1976
in Retirement Allowance Payable to Former Members of
the Fire and Police Departments whose Retirements were
Effective During the Period July 2, 1975 to October 14
1976

Dear Mr. Boreman:

On behalf of the Legislative and Personnel Committee, you
have requested my advice with respect to the implementation of
certain Charter provisions which were added by virtue of the
adoption of Proposition M at the November 5, 1974 election.

As you are aware, Proposition M established a new retire-
ment program for members of the Police and Fire Departments
effective July 1, 1975. All persons becoming members of these
departments on or after July 1, 1975 are covered under this new
program. Those persons who were members of the Police and Fire
Department immediately prior to July 1, 1975 were granted the
right to elect to be covered under the new program.

One of the features included in the new program is the
requirement that

"Every retirement or death allowance payable to or
on account of any member (of the Police or Fire
Department) shall be increased or decreased as of
July 1, 1976, and on July 1 of each succeeding
year by an amount equal to fifty percent of any

Handwritten header information, possibly a date and page number.

Handwritten text, possibly a title or introductory paragraph.

Handwritten text, possibly a paragraph.

Handwritten text, possibly a paragraph.

Handwritten text, possibly a paragraph.

Handwritten text, possibly a paragraph.

Handwritten text, possibly a paragraph.

Handwritten text, possibly a paragraph.

Handwritten text, possibly a paragraph.

G. H. Boreman

-2-

20 May 1977

increase or decrease respectively in the rate of remuneration attached to the rank or position upon which such retirement or death allowance was based; provided, however, that no allowance shall be reduced below the amount being received by a member or his beneficiary on June 30, 1976, or on the date such member or beneficiary began to receive the allowance, whichever is later." Charter, Section 8.559-6 and 8.585-6).

In accordance with these provisions, on July 1, 1976, every retirement or death allowance payable to or on account of members of the Police and Fire Departments who are covered under the new retirement plan was to be increased by an amount equal to 50 per cent of any increase in the rate of remuneration attached to the rank or position upon which such retirement or death allowance was based.

Allowances payable to or on account of the members of the Police and Fire Departments covered under the new retirement plan are determined on the basis of the "rate of remuneration," that is, salary being received by the member "at the time of retirement," rather than, for example, an average of the salaries paid over a specified period of time.

The salary ordinance for fiscal year 1975-76 provides as follows with respect to members of the Police and Fire Departments:

- a. An increase of 6.5 per cent for July 1, 1975;
- b. The salary for the period July 2, 1975 through October 14, 1975 shall be the same as that established for fiscal year 1974-75; and
- c. An increase of 13.05 per cent commencing October 15, 1975.

The validity of this salary ordinance, and the salary schedules which it established, was challenged by a taxpayer's suit. However, its validity was confirmed by Court. (Verreos v. City and County of San Francisco, 63 C.A.3d 86.)

Salaries for members of the Police and Fire Departments for fiscal year 1976-77 are established and governed by the provisions of Ordinance No. 364-76.

Dear Mr. [Name],

I have just received your letter of the 7th inst. and am glad to hear that you are interested in the [subject]. I am sure that you will find the [information] very valuable.

I am, Sir, very respectfully,
 Yours truly,
 [Signature]

I am, Sir, very respectfully,
 Yours truly,
 [Signature]

I am, Sir, very respectfully,
 Yours truly,
 [Signature]

I am, Sir, very respectfully,
 Yours truly,
 [Signature]

I am, Sir, very respectfully,
 Yours truly,
 [Signature]

I am, Sir, very respectfully,
 Yours truly,
 [Signature]

I am, Sir, very respectfully,
 Yours truly,
 [Signature]

I am, Sir, very respectfully,
 Yours truly,
 [Signature]

I am, Sir, very respectfully,
 Yours truly,
 [Signature]

G. H. Boreman

-3-

20 May 1977

By its terms, the salary schedules for members of the Police and Fire Departments employed prior to July 1, 1976, are the same as those which had been in effect commencing October 15, 1975. However, compared to the salaries in effect during period commencing July 2, 1975 through October 15, 1975, Ordinance No. 364-76 established salary schedules which were 13.05 per cent higher.

Several members of the Police and Fire Departments retired during the period July 2, 1975 through October 14, 1975. Consequently, their allowances were determined based upon a salary equal to that which had been paid during fiscal year 1974-75.

The questions now presented, therefore, are whether, as to these retirees there has been an "increase . . . in the rate of remuneration attached to the rank or position" upon which their allowances were based. Since it had always been the practice of the City and County to establish a salary schedule providing a single rate of pay for each position for the entire fiscal year, the drafters of Charter Sections 8.559-6 and 8.585-6 did not envision a situation wherein different salary levels would be in effect at different times during a given fiscal year. Consequently, Sections 8.559-6 and 8.585-6 contain no specific provision with respect to the problem at hand.

As I have noted, there was no increase in salary schedules effective July 1, 1976 as compared to those in effect for the period October 15, 1975 through June 30, 1976. Using this basis of comparison, there would be no adjustment of allowances required, as there had been no increase in the rates of remuneration. Other bases of comparison would be comparison of the salary schedules effective July 1, 1976 with (a) the salary in effect on July 1, 1975 and (b) the salary in effect during the period July 2, 1975 through October 14, 1975.

Any ambiguity and uncertainty in pension legislation requires a construction that will, if reasonably possible, accomplish the purpose of the legislation. (Terry v. Berkeley, 41 C.2d 698). Further, ambiguities in such legislation must be resolved in favor of the employee in order to carry out the beneficent purposes of a retirement program. (Gorman v. Cranston, 64 C.2d 441; Le Page v. City of Oakland, 13 C.A.3d 689).

The first of these is the fact that the data are not normally distributed. This is a problem because the standard statistical tests assume normality. However, there are several ways to deal with this problem. One way is to use non-parametric tests, which do not assume normality. Another way is to transform the data so that they are normally distributed. This can be done by taking the logarithm of the data, for example.

The second of these is the fact that the data are not independent. This is a problem because the standard statistical tests assume independence. However, there are several ways to deal with this problem. One way is to use time series models, which take into account the dependence between observations. Another way is to use spatial models, which take into account the dependence between observations at different locations.

The third of these is the fact that the data are not stationary. This is a problem because the standard statistical tests assume stationarity. However, there are several ways to deal with this problem. One way is to use differencing, which removes the trend from the data. Another way is to use cointegration models, which allow for a long-run relationship between the variables.

The fourth of these is the fact that the data are not balanced. This is a problem because the standard statistical tests assume balance. However, there are several ways to deal with this problem. One way is to use panel data models, which take into account the unobserved heterogeneity between individuals. Another way is to use fixed effects models, which control for the unobserved heterogeneity by including individual-specific intercepts.

The fifth of these is the fact that the data are not complete. This is a problem because the standard statistical tests assume completeness. However, there are several ways to deal with this problem. One way is to use imputation, which fills in the missing data with estimated values. Another way is to use multiple imputation, which generates multiple imputed datasets.

The sixth of these is the fact that the data are not representative. This is a problem because the standard statistical tests assume representativeness. However, there are several ways to deal with this problem. One way is to use weighting, which adjusts the data to be representative of the population. Another way is to use stratification, which divides the data into strata that are representative of the population.

G. H. Boreman

-4-

20 May 1977

As previously noted, the drafters of the provisions in question undoubtedly did not foresee the manner in which salaries for fiscal year 1976-77 would be established for members of the Police and Fire Departments and, therefore, there is no specific method prescribed for determining the amount of adjustment to be made under the circumstances which have occurred.

Clearly, the amount of a retired person's allowance is of the utmost economic importance to him. The allowances involved here were determined initially by the fact that the individuals retired during the period July 2, through October 14, 1975, and therefore were based on the salaries which were established as being applicable to that period. Most of these persons retired voluntarily in early July 1975, at a date prior to the establishment of the salaries for fiscal year 1975-76. If they had known what was to transpire, they obviously would have postponed their retirement until after October 14, 1975, so as to have the benefit of the higher salaries which would then have been applicable.

In accordance with the mandate that pension laws are to be liberally construed in favor of the recipients and in view of the circumstances involved herein, it is my opinion that the adjustment of allowances for those persons who retired during the period July 2 through October 14, 1975, should be determined by comparing the salary schedules in effect during that period (that is, the salaries upon which their allowances were based) with the salary schedules which were established as of July 1, 1976 for members of the Police and Fire Departments.

You are advised accordingly.

Very truly yours,

THOMAS M. O'CONNOR
City Attorney

SF
47
3
7-14

SF City Attorney

Letter Opinion No. 77-14

RECEIVED

JUN 14 1977

RECEIVED

June 3, 1977

Honorable Joseph E. Tinney
Assessor
Room 101, City Hall
San Francisco, California 94102

Subject: Exemption from Taxation on Real Property Leased
by New Zealand for Its Consular Office

Dear Mr. Tinney:

This letter is in response to your inquiry of May 26, 1977, concerning the taxable or tax exempt status of real property leased by the Government of New Zealand for its consular offices.

In 1969, the California Attorney General considered this question and ruled (Attorney General Opinion No. 69-242) that, in the absence of express treaty provisions with the particular foreign state, the tax status of real property used for consular purposes was as follows:

1. Where the property is owned by a foreign government and used exclusively for consular purposes, it is exempt from ad valorem property tax. Republic of Argentina v. City of New York (1969) 250 N.E.2d 698.
2. Where the property is only leased, and not owned, by the foreign government, the owner-lessor of the property would be liable for property tax on the full value of the property.

The distinction made by the California Attorney General between owned property and leased property has been incorporated

1. The first part of the document discusses the importance of maintaining accurate records of all transactions.

2. It is essential to ensure that all data is entered correctly and that the system is regularly updated.

3. The second part of the document outlines the procedures for handling customer inquiries and complaints.

4. It is important to maintain a high level of customer service and to respond to inquiries in a timely manner.

5. The third part of the document discusses the importance of maintaining accurate financial records.

Honorable Joseph E. Tinney 2

June 3, 1977

into Article 32 of the Vienna Convention, to which both the United States and New Zealand are parties. Section 1 thereof provides that "Consular premises . . . of which the sending State . . . is the owner or lessee shall be exempt from all . . . taxes . . ."; but Section 2 thereof provides that "The exemption from taxation . . . shall not apply to such . . . taxes if, under the law of the receiving State, they are payable by the person who contracted with the sending State . . .". Stated another way, Article 32 of the Vienna Convention provides that leased consular premises are exempt from tax unless such taxes, under local law, are payable by the owner-lessor.

Under California law, real property taxes ordinarily are payable by the owner of such property, subject to certain exceptions not applicable here. The subject assessment was made against the nonexempt owner of the leased premises, and the property taxes accordingly are payable by this owner.

Accordingly, it is my opinion that no exemption should be granted in this situation.

Very truly yours,

THOMAS M. O'CONNOR

THE [illegible] OF [illegible]

[illegible text block]

[illegible text block]

[illegible text block]

[illegible text block]

[illegible text block]

[illegible text block]

June 13, 1977

Mr. Gilbert H. Boreman
Clerk of the Board
Board of Supervisors
City and County of San Francisco
235 City Hall
San Francisco, CA 94102

Subject: Proposed \$90 Million Airport
Revenue Bond Issue

Dear Mr. Boreman:

This is in response to your letter of June 7, 1977
written at the direction of Supervisors Molinari and
Kopp.

Your letter points out that the CIAC (Capital Improve-
ments Advisory Committee), by letter of May 24, 1977 to
Mayor Moscone, "recommends that no more than \$47,600,000
worth of additional [Airport] revenue bonds be authorized
at this time" (this in contrast to the \$90 million issue
recommended by the Airports Commission) and calls attention
to my recent opinion to the effect that, in view of the Air-
ports Commission's recommendation (its Resolution No. 77-0129
of May 3, 1977) pursuant to Charter Section 7.306 as amended
November 2, 1976 (Proposition "P"),

"It is now the Board's mandatory duty. . . ,
by resolution, to submit the recommended revenue
bond issue to the voters. The Board has no dis-
cretion in the matter."

1. The first part of the paper is devoted to the study of the properties of the function $f(x)$ defined by the equation

$$f(x) = \int_0^x \frac{1}{1+t^2} dt$$

It is shown that the function $f(x)$ is increasing and concave down on the interval $(-\infty, \infty)$.

2. In the second part of the paper, we consider the function $g(x)$ defined by the equation

$$g(x) = \int_0^x \frac{1}{1+t^4} dt$$

It is shown that the function $g(x)$ is increasing and concave down on the interval $(-\infty, \infty)$.

3. In the third part of the paper, we consider the function $h(x)$ defined by the equation

$$h(x) = \int_0^x \frac{1}{1+t^6} dt$$

It is shown that the function $h(x)$ is increasing and concave down on the interval $(-\infty, \infty)$.

Mr. Gilbert H. Boreman

2

June 13, 1977

Your letter states:

"The Supervisors respectfully request your opinion as to whether it would be within the Board of Supervisors' mandate to return to the Airports Commission the bond issue for further hearing and to consider lowering the amount of the issue, given the mandate of the Board for the financial responsibility of the City and County of San Francisco."

My opinion is that this would not be within the Board's mandate (power).

Before November 2, 1976 Charter Section 7.306 provided in material part:

"Subject to the approval, amendment or rejection of the board of supervisors in each instance, the airports commission shall have authority to issue airport revenue bonds for the purpose of acquiring, constructing, improving or developing airports or airport facilities under its jurisdiction under such terms and conditions as the commission may authorize by appropriate resolution."

Thus, prior to November 2, 1976 the authority of the Airports Commission to issue revenue bonds was "subject to the approval, amendment or rejection of the board of supervisors"; in addition, voter approval was not required for Airport revenue bonds. Board approval alone sufficed.

In both respects the November 2, 1976 amendment of Charter Section 7.306 (Proposition "P") changed the law. In lieu of the just-quoted sentence the amended Section 7.306 reads in material part:

"Upon the recommendation of the airports commission the board of supervisors shall by resolution submit to the qualified voters of the City and County of San Francisco, at an election held for that purpose,

1000

1000

1000

1000

1000

1000

1000

1000

1000

1000

1000

1000

Mr. Gilbert H. Boreman

3

June 13, 1977

the proposition of issuing bonds pursuant to the Revenue Bond Law of 1941, as it reads, or may hereafter be amended, for the purpose of acquiring, constructing, improving or developing airports or airport facilities under the jurisdiction of the airports commission in accordance with the terms and conditions recommended by the airports commission. If the proposition is approved by a majority of the voters voting on the proposition, the airports commission may from time to time authorize by appropriate resolution the sale of bonds; . ."

Thus it is not now, as it was prior to November 2, 1976, within the Board's mandate (power) to return the matter to the Commission for further hearing to consider reducing the amount of the issue.

As respects your letter's reference to

" . . . the mandate of the Board for the financial responsibility of the City and County. . . ,"

attention is called to the fact that Charter Section 7.306 provides:

"The bonds issued by the commission pursuant to the provisions of this section (7.306) shall not constitute or evidence indebtedness of the city and county but shall constitute and evidence only indebtedness of the said commission payable solely out of revenues received by the commission from airports or airport facilities operated or controlled by it.

"Airport revenue bonds issued for such purposes pursuant to this section shall not be included in the bonded debt limit provided for in section 6.401 of this Charter."

Mr. Gilbert H. Boreman

4

June 13, 1977

Thus revenue bonds issued pursuant to Charter Section 7.306 are bonds of the Airports Commission, not of the City and County; such bonds are not included in the City and County's bonded debt limit (twelve percent (12%) of the assessed value of all property subject to taxation pursuant to Charter Section 6.401) and, as respects such bonds, the Board is under no financial-responsibility mandate.

The CIAC is created by and derives its powers from an ordinance, Sections 3.05-3.014 of the San Francisco Administrative Code. Because an ordinance cannot limit the effect of the Charter (Marculescu v. Planning Commission (1935) 7 C.A.2d 371, 373), the provisions of Sections 3.05-3.014 do not apply to Airport revenue bonds under Charter Section 7.306.

Thus, on the basis of the facts stated in your letter, it is the Board's mandatory duty, by resolution, to submit the recommended \$90 million bond issue to the voters. It has no discretion in the matter.

Very truly yours,

THOMAS M. O'CONNOR
City Attorney

June 20, 1977

Hon. Quentin L. Kopp, President
Board of Supervisors
235 City Hall
San Francisco, California 94102

Subject: Excusing of Retirement Board Member from Voting On
Application for Disability or Death Benefits because
of Inability to Act in an Impartial Manner.

Dear Supervisor Kopp:

This responds to your oral request for my opinion as to whether a member of the Retirement Board may be excused from voting on an application for disability or death benefits because circumstances, relating to the applicant or the application, render such member incapable of being impartial in arriving at a decision. You indicated that such circumstances might include, for example, friendship with the applicant or the applicant's having contacted the Board member with respect to his application.

In determining applications for disability or death benefits, the Retirement Board acts in a quasi-judicial capacity. (Ware v. Retirement Board, 65 C.A.2d 781; Corcoran v. Retirement Board, 114 C.A.2d 738.) The typical applications coming before the Retirement Board for hearing and determination concern industrial disability and death allowances and full-pay disability benefits. Such benefits have been classified by the courts of this State as "fundamental vested rights," (Strumsky v. San Diego County Employees Retirement Ass'n, 11 Cal. 3d 28; Dickey v. Retirement Board, 16 Cal. 3d 745.) Due process requires that the determination of such an application be the result of a "fair hearing." (See, C.C.P., Section 1094.5.)

THE HISTORY OF THE

REIGN OF

CHARLES I.

BY

JOHN BURNET

OF THE UNIVERSITY OF OXFORD

1678

LONDON: Printed by J. Streater, at the Sign of the Gun, in St. Dunstons Church-yard, 1678.

THE HISTORY OF THE REIGN OF CHARLES I. BY JOHN BURNET, OF THE UNIVERSITY OF OXFORD. 1678.

THE SECOND EDITION.

THE HISTORY OF THE REIGN OF CHARLES I. BY JOHN BURNET, OF THE UNIVERSITY OF OXFORD. 1678.

THE HISTORY OF THE REIGN OF CHARLES I. BY JOHN BURNET, OF THE UNIVERSITY OF OXFORD. 1678.

Hon. Q.L.Kopp

-2-

June 20, 1977

One aspect of a fair hearing is the right to be heard by an impartial tribunal. (Albert Albek, Inc. v. Brock, 75 C.A. 2d 173, 176.) Accordingly, a party to an administrative hearing, such as those before the Retirement Board, would have the right to disqualify for bias any person participating in the decision of the particular case. (See Saks & Co. v. Beverly Hills, 107 C.A.2d 260; Nider v. Homan 32 C.A.2d 11, 17.) Personal prejudice, that is, an attitude of favoritism or animosity toward a particular party, is a disqualification if it is substantial. (2 Davis, Administrative Law Treatise, Section 12.06.)

Another aspect of a fair hearing is the requirement that a board, such as the Retirement Board, determine matters coming before it on the basis of the evidence presented to it during the course of the proceedings. Receipt of information by members of the Board "outside the record" results in an unfair hearing, and upon institution of appropriate court proceedings, could result in vacation of the Board's decision and a remanding of the case for a new hearing. (English v. Long Beach, 35 Cal.2d 155; Safeway Stores Inc. v. Burlingame, 170 C.A.2d 637, 647.)

Therefore, a member of the Retirement Board who, because of circumstances relating to a particular application (such as, for example, having received information "outside the record" from the applicant or otherwise, or having a personal prejudice for or against the applicant) considers himself or herself unable to act in an impartial manner with respect to the application, should not participate in the hearing of that application, and, of course, should not vote on the question of whether the application should be granted or denied.

As you are aware, a member of the Retirement Board present when a question is put is required to vote, unless such member is excused from voting by a motion adopted by a majority of the members present. (Charter, Section 3.500; Rule 18, Retirement Board Rules of Practice and Procedure.) Therefore, a member of the Retirement Board who finds himself or herself unable to act in an impartial manner with respect to an application should announce that fact to the other members of the Board and request to be excused from all participation in that case. The other members of the Board would, of course, in such a situation, be obligated to excuse such member from participation in the particular case.

You are advised accordingly.

Very truly yours,

THOMAS M. O'CONNOR
City Attorney

1917-1918

1917-1918

The following is a list of the names of the persons who have been elected to the office of the President of the United States since the year 1789. The names are given in the order in which they were elected, and the year of their election is given in parentheses. The names are given in the order in which they were elected, and the year of their election is given in parentheses.

1. George Washington (1789-1797)
2. John Adams (1797-1801)
3. Thomas Jefferson (1801-1809)
4. James Madison (1809-1817)
5. James Monroe (1817-1825)
6. John Quincy Adams (1825-1829)
7. Andrew Jackson (1829-1837)
8. Martin Van Buren (1837-1841)
9. William Henry Harrison (1841-1845)
10. John Tyler (1845-1849)

11. Zachary Taylor (1849-1850)
12. Franklin Pierce (1853-1857)
13. James Buchanan (1857-1861)
14. Abraham Lincoln (1861-1865)
15. Andrew Johnson (1865-1869)
16. Ulysses S. Grant (1869-1877)
17. Rutherford B. Hayes (1877-1881)
18. James A. Garfield (1881-1881)
19. Chester A. Arthur (1881-1885)
20. Grover Cleveland (1885-1889)

21. Benjamin Harrison (1889-1893)
22. William McKinley (1897-1901)
23. Theodore Roosevelt (1901-1909)
24. William Howard Taft (1909-1913)
25. Woodrow Wilson (1913-1921)
26. Warren G. Harding (1921-1923)
27. Calvin Coolidge (1923-1933)
28. Herbert Hoover (1933-1945)
29. Franklin D. Roosevelt (1933-1945)
30. Dwight D. Eisenhower (1953-1961)

31. John F. Kennedy (1961-1963)
32. Lyndon B. Johnson (1963-1969)
33. Richard Nixon (1969-1974)
34. Gerald R. Ford (1974-1977)
35. Jimmy Carter (1977-1981)
36. Ronald Reagan (1981-1989)
37. George H. W. Bush (1989-1993)
38. Bill Clinton (1993-2001)
39. George W. Bush (2001-2009)
40. Barack Obama (2009-2017)

41. Donald Trump (2017-2021)
42. Joe Biden (2021-2025)

SF City Attorney

≡ Letter Opinion No. 77-17

June 20, 1977

Ms. Lidia M. LaGarda
Commission, Recreation and
Park Department
McLaren Lodge, Golden Gate Park
San Francisco, California 94117

Subject: Ralph M. Brown Act; Legality of
Executive Session of Recreation
and Park Commission

This is in response to your letter of June 16, 1977 wherein you request my opinion as to the legality of action taken by the Recreation and Park Commission at its meeting on May 12, 1977. At the conclusion of that meeting the Recreation and Park Commission convened in executive session to consider six letters which you had written, addressed to the Mayor, the Editor of Rolling Stone Magazine, and Mission community organizations. Other than a consideration of the letters, and by implication, discussion of them by the members of the Commission, your letter does not indicate that any action was taken by resolution or otherwise.

The Ralph M. Brown Act is contained in Government Code Section 54950-54961, inclusive.

Section 54950 declares the policy of the act in the following language:

"In enacting this chapter, the Legislature finds and declares that the public commissions, boards and councils and the other public agencies

ORIGINAL ARTICLES

SYMPTOMS



SYMPTOMS OF
ACUTE
INFLUENZA

BY
J. H. HARRIS, M.D.
AND
J. H. HARRIS, M.D.

SYMPTOMS OF
ACUTE
INFLUENZA
BY
J. H. HARRIS, M.D.
AND
J. H. HARRIS, M.D.

SYMPTOMS OF
ACUTE
INFLUENZA

SYMPTOMS OF
ACUTE
INFLUENZA

SYMPTOMS OF
ACUTE
INFLUENZA

Ms. Lidia M. LaGarda

-2-

June 20, 1977

in this State exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly."

"The people of this State do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created."

Section 54953 reads:

"All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency, except as otherwise provided in this chapter."

Exceptions to the last quoted section are found in Section 54957. That section reads in pertinent part:

"Nothing contained in this chapter shall be construed to prevent the legislative body of a local agency from holding executive sessions with the Attorney General, district attorney, sheriff, or chief of police, or their respective deputites, on matters posing a threat to the security of public buildings or a threat to the public's right of access to public services or public facilities, or from holding executive sessions during a regular or special meeting to consider the appointment, employment or dismissal of a public employee or to hear complaints or charges brought against such employee by another person or employee unless such employee requests a public hearing. The legislative body also may exclude from any such public or private meeting, during the examination of a witness, any or all other witnesses in the matter being investigated by the legislative body."

Another exception is that a legislative body may consult with its attorney or other attorney representing such body in private or in executive session under circumstances in which the lawyer-client privilege conferred by the Evidence Code may lawfully be claimed. (Sacramento Newspaper Guild v. Sacramento County Board of Supervisors. (1968) 263 Cal.App. 2d 41.)

Ms. Lidia M. LaGarda

-3-

June 20, 1977

Legislative body as used in the Brown Act would include the Recreation and Park Commission under Section 54952.5.

From the above-quoted sections, and particularly Section 54950, it follows that the prime purpose decreed by the act is to protect the public interest where public bodies are engaged in "the conduct of the people's business." The idea is expressed that the people should know the processes by which public bodies arrive at decisions resulting in action and that this requires not only that the actions taken be taken in meetings open to the public but also that the deliberations should be conducted in public meetings.

Thus, all meetings of the Recreation and Park Commission are to be open and public unless the matter to be deliberated or acted upon comes within the exceptions enumerated above.

After examining copies of the letters which were the subject of the executive session, it would appear to me that the content of them, if that was what was considered by the members of the Commission, would not permit an executive session under the provision of Section 54957 for neither public security nor the appointment, employment or dismissal of an employee was in issue.

However, your letters did mention present and the immediate threat of future litigation against the Commission which could be the proper subject of an executive session. But such session is only proper where the Commission is in fact conferring with its attorney. It does not appear that such consultation was in fact occurring at the meeting in question.

You are advised therefore that your six letters were not a proper subject matter for an executive session under the Brown Act.

In your letter to me you also state that no notice of the executive session or its agenda was given to the public or to you. Under the Brown Act where an executive session is convened as part of a regular meeting there is no requirement that notice be given to anyone that an executive session will be held or of the subject matter to be considered.

Very truly yours,

THOMAS M. O'CONNOR
City Attorney

THE UNIVERSITY OF CHICAGO PRESS

THE UNIVERSITY OF CHICAGO PRESS

THE UNIVERSITY OF CHICAGO PRESS

THE UNIVERSITY OF CHICAGO PRESS

THE UNIVERSITY OF CHICAGO PRESS

THE UNIVERSITY OF CHICAGO PRESS

THE UNIVERSITY OF CHICAGO PRESS

THE UNIVERSITY OF CHICAGO PRESS

SF City Attorney

June 24, 1977

Mr. Edwin Sarsfield, General Manager
Department of Social Services
P.O. Box 7988
San Francisco, CA 94120

Re: Conflict of Interest for Placement Worker to Operate Home
for Placement

Dear Mr. Sarsfield:

This is in response to your request for my opinion if a prohibited conflict of interest would arise if a Child Placement Worker operates a group home program for San Francisco children.

It is my understanding that a 2942 Senior Child Welfare Worker is developing a group home program. The home will be available for placement of San Francisco children requiring foster home care. The employee expects to direct the group home operation, while continuing to place children as an employee of the Department of Social Services, in home care facilities other than her own. It is my understanding that the City and County licenses homes which are then available for placement by the child welfare workers.

Section 8.105(f) of the charter prohibits an employee from having

". . . an interest in any matter for his consideration or determination which arises from a close business association of a continuing nature. A close business association

Editorial

Editorial

Editorial

Editorial

Editorial

Editorial

Editorial

Editorial

Editorial

Editorial

Mr. Edwin Sarsfield

2

June 24, 1977

of a continuing nature means any undertaking for profit, including, but not limited to, a corporation, partnership, officeholding or employment by any labor or employee organization, trust, proprietorship, association or joint venture."

Unlike Section 8.105(a) which prohibits specific interests in contracts, property sales, franchise, etc. which are entered into or authorized by the employee, subsection "f" is a broader attack upon sources of potential conflicts of interest. This subsection prohibits an officer or employee from having any interest in any matter which the person is expected to act upon in the course of his or her employment, if the matter is connected with an on-going business from which the employee receives financial benefit.

A placement worker is expected to place a child in the foster care program which best fulfills the special needs of the child. The employee must consider all the homes available to the department. However, if the employee operated or was employed by a foster home, she would have to disqualify that home at the initial stage of the placement proceedings. Though the home she was associated with might be the most desirable placement for the child, she could not make that placement because the home would have to be rejected under the provisions of charter §8.105(a) and Government Code Section 1090.

Child placement is a matter which comes before the placement worker for her consideration on a daily basis. Obviously she is interested in the placement of children by the city and county. This interest is not diminished by the act of removing her foster care home from her consideration. A conflict of interest arises at the time the employee removes the home from her consideration. There is no provision in §8.105 for an employee to avoid a conflict of interest by refraining from participating in a decision which affects a personal interest. The employee's interest in a foster care program in and of itself conflicts with her employment as a placement worker.

Furthermore, Section 8.105(c) prohibits an employee from

Mr. Edwin Sarsfield

3

June 24, 1977

using ". . . any privileged information obtained by him by virtue of his office or employment to advance the financial or other private interest of himself or others." The information a placement worker receives during her day-to-day activities may be helpful in establishing a program which finds acceptance by her fellow placement workers. The use of such information would result in a violation of this section.

Charter Section 8.105(g) empowers the Civil Service Commission to adopt rules and regulations restricting after hours "activities, employments and enterprises". Civil Service Commission Rule 29.03(a) prohibits an employee from participating ". . . in any activity or enterprise where income, profit or other gain is, or may be accrued, which could reflect on the honor or efficiency of the city service or which could be contrary to the best interests of the city service in any respect." (Emphasis added.)

Rule 29.03(b) mandates an appointing officer to ". . . report to the Commission those activities or enterprises which in accordance with the provisions of this section should be prohibited to specific classifications. . . ." If the recommendation is adopted by the Commission such activity by a designated employee would be prohibited.

I suggest that you take the action required by Charter Section 8.105(g) and Civil Service Commission Rule 29.03, recommending that placement workers be prohibited from having any interests in home care programs.

Very truly yours,

THOMAS M. O'CONNOR
City Attorney

100

100

100

100

100

100

100

June 29, 1977

Mr. John B. Wentz
Public Utilities Commission
287 City Hall
San Francisco, California 94102

Subject: Records of Equal Employment Opportunity
Data of the Bureau of Personnel and
Training; confidentiality of releasing
data

Dear Mr. Wentz:

This replies to your June 24 letter asking these questions:

1. Is the Municipal Railway's Bureau of Personnel and Training obligated to forward to a member of the Public Utilities Commission, Equal-Employment-Opportunity data such as employees' names, race, date of hire, starting classification, present classification and departmental unit?
2. What would be the effect of forwarding this identifying data relative to employee confidentiality laws and the Right to Privacy Act?
3. Could this identifiable information then be forwarded by the Commissioner to a community agency, as per above, without the consent or permission of employees?
4. If the Commission is not in compliance, what is its potential liability?

CONTENTS

| | |
|-------------------|---|
| Original Articles | 1 |
| Editorial | 1 |
| Correspondence | 1 |
| Obituary | 1 |
| News and Notes | 1 |
| Announcements | 1 |
| Advertisements | 1 |

THE JOURNAL OF THE AMERICAN MEDICAL ASSOCIATION
PUBLISHED WEEKLY
CHICAGO, ILL., MAY 1, 1919
Vol. 34, No. 19

Original Articles
Editorial
Correspondence
Obituary
News and Notes
Announcements
Advertisements

Mr. John B. Wentz

2

June 29, 1977

5. Are Municipal Railway payrolls open to public inspection?

Answers

1. No, unless the Commission by resolution, (a) finds that disclosure of the data will not constitute an unwarranted invasion of the personal privacy of employees, and (b) directs the General Manager of the Municipal Railway to order the Bureau to prepare and forward the data to the Commissioner.

2. Absent a Commission finding as aforesaid, disclosure of the data could constitute an invasion of employees' privacy rights. An erroneous Commission finding (a finding of no unwarranted invasion when a court subsequently determined there was) could also constitute an invasion of such rights.

3. Absent a Commission finding and resolution as stated in 1, the data should not be forwarded to the Commissioner (if the advice here given is followed). Present such a finding and resolution, yes.

4. If the Commission, by resolution, authorized disclosure of personnel data which a court subsequently found constituted an unwarranted invasion of the personal privacy of employees, the City might, but probably would not, be held liable in damages to employees who could show monetary injury by the disclosure; neither the Commissioners themselves, nor the Commission would be liable. A refusal to permit the public to inspect records which a court finds are public records could result in a judgment enforcing the right of inspection, and the City's liability for costs and reasonable attorney fees incurred in enforcing the right.

5. Payroll records are public records, hence open to public inspection.

Discussion

1. The right to pursue and obtain "privacy" is a constitutional right. (Cal. Const., Art. I, §1.)

The Public Records Act (Gov. C. §§6250-6261) provides, in §6254(c), that nothing therein shall be construed to require disclosure of:

THE UNIVERSITY OF CHICAGO

1

THE UNIVERSITY OF CHICAGO

THE UNIVERSITY OF CHICAGO

THE UNIVERSITY OF CHICAGO

THE UNIVERSITY OF CHICAGO

THE UNIVERSITY OF CHICAGO

THE UNIVERSITY OF CHICAGO

THE UNIVERSITY OF CHICAGO

THE UNIVERSITY OF CHICAGO

THE UNIVERSITY OF CHICAGO

THE UNIVERSITY OF CHICAGO

THE UNIVERSITY OF CHICAGO

THE UNIVERSITY OF CHICAGO

Mr. John B. Wentz

3

June 29, 1977

"Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy."

Gov. C. §6253 states that, except as hereafter provided, "every citizen has a right to inspect any public record," and that "public records are open to inspection at all times during the office hours of the state or local agency." A copy of the public record can also be obtained by paying for the cost of making a copy (or a fee if a statute sets a fee). (Gov. C. §§6256, 6257).

Thus personnel files the disclosure of which would constitute an unwarranted invasion of personal privacy are not open to the public.

With respect to personnel files under its jurisdiction, the Commission would be the body with authority, in the first instance, to determine whether their disclosure, or the disclosure of data contained therein, "would constitute an unwarranted invasion of privacy."

The courts would be the final arbiters of whether the Commission had properly exercised its authority.

Because of the express exception of "personnel files" from the provision of the Public Records Act, the safe and recommended course for the Commission to follow would be to refuse to pass a resolution directing disclosure of data contained in personnel files. A member of the Public Utilities Commission is entitled to vote yes or no on matters (motions) brought before the Commission. In other respects, for example, in the matter of inspecting personnel files of departments under the jurisdiction of the Public Utilities Commission, a member of the Public Utilities Commission has no greater rights than any other citizen. For example, a Commissioner could not order the Municipal Railway's Bureau of Personnel and Training to collect and furnish to him data from the Bureau's personnel files. He could, however, at a Commission meeting, move that the Commission pass a resolution, the effect of which (if passed) could result in his being furnished the data.

THE UNIVERSITY OF CHICAGO
CHICAGO, ILLINOIS
JANUARY 1950

TO THE PRESIDENT OF THE UNIVERSITY OF CHICAGO
FROM THE FACULTY OF THE UNIVERSITY OF CHICAGO

WE, THE FACULTY OF THE UNIVERSITY OF CHICAGO,
DO HEREBY RESOLVE THAT

THE UNIVERSITY OF CHICAGO
SHOULD BE ADVISED THAT

THE FACULTY OF THE UNIVERSITY OF CHICAGO
HAS ADOPTED THE FOLLOWING

RESOLUTIONS:
1. That the University of Chicago should be advised that the Faculty of the University of Chicago has adopted the following resolutions:
2. That the University of Chicago should be advised that the Faculty of the University of Chicago has adopted the following resolutions:
3. That the University of Chicago should be advised that the Faculty of the University of Chicago has adopted the following resolutions:
4. That the University of Chicago should be advised that the Faculty of the University of Chicago has adopted the following resolutions:
5. That the University of Chicago should be advised that the Faculty of the University of Chicago has adopted the following resolutions:
6. That the University of Chicago should be advised that the Faculty of the University of Chicago has adopted the following resolutions:
7. That the University of Chicago should be advised that the Faculty of the University of Chicago has adopted the following resolutions:
8. That the University of Chicago should be advised that the Faculty of the University of Chicago has adopted the following resolutions:
9. That the University of Chicago should be advised that the Faculty of the University of Chicago has adopted the following resolutions:
10. That the University of Chicago should be advised that the Faculty of the University of Chicago has adopted the following resolutions:

Mr. John B. Wentz

4

June 29, 1977

2. In view of the above, answer 2 does not require further discussion. The "invasion of privacy" provisions of the Penal Code (§§630-637.2) are not applicable here.

3. Same

4. Neither a public entity nor a public employee (which includes "officers," Gov. C. §810.2) is liable for an injury caused by adopting an enactment or failing to enforce any law. (Gov. C. §§818.2, 821) While "enactment" is not defined as including a "resolution," it does include a "regulation," (Gov. C. §810.6), and in my opinion a Commission resolution would probably be deemed an enactment. In addition, a public employee is not liable, hence a public entity or public authority is not liable, for injury resulting from an act or omission of an employee (officer) which "was the result of the exercise of the discretion vested in him, whether or not such discretion be abused." (Gov. C. §§820.2, 815.2(b).) An improvident Commission resolution (one authorizing disclosure of data which a court subsequently determined were not public records and should not have been disclosed) would probably fall under the "discretionary" exemption from liability. There are constant surprises in the field of tort liability (the field is quite fluid), hence my answer 4 above does not foreclose all possibility of liability in damages, but it is my opinion that there would not be liability.

For Commission refusal to permit inspection of public records the City could be held liable for costs and reasonable attorney fees. (Gov. C. §§6258, 6259).

In view of the express exception of personnel files from disclosure (Gov. C. §6254(c)), I would view as dim the possibility of City being held liable for costs and attorney fees incurred in compelling their disclosure. That is, in my opinion a court would not order disclosure of such files, or of data contained therein, if the Commission had, in the first instance, refused to pass a resolution for their disclosure after finding that the disclosure would be an unwarranted invasion of personal privacy of employees.

5. As stated, payrolls are public records and open

THE HISTORY OF THE

REIGN OF

CHARLES THE FIRST

IN WHICH ARE CONTAINED THE
MOST IMPORTANT AND INTERESTING
PARTS OF HIS REIGN
FROM HIS MARRIAGE TO THE
DEATH OF THE KING
BY
JOHN BURNET
OF
GLASGOW
IN TWO VOLUMES
THE SECOND VOLUME
LONDON
PRINTED BY J. BARNARD, ST. PAULS CHURCH-YARD
1724

THE HISTORY OF THE
REIGN OF
CHARLES THE FIRST
IN WHICH ARE CONTAINED THE
MOST IMPORTANT AND INTERESTING
PARTS OF HIS REIGN
FROM HIS MARRIAGE TO THE
DEATH OF THE KING
BY
JOHN BURNET
OF
GLASGOW
IN TWO VOLUMES
THE SECOND VOLUME
LONDON
PRINTED BY J. BARNARD, ST. PAULS CHURCH-YARD
1724

Letter Opinion No. 77-19

Mr. John B. Wentz

5

June 29, 1977

to inspection by any citizen including a Commissioner.

Very truly yours,

THOMAS M. O'CONNOR
City Attorney

July 19, 1977

Mr. Gilbert H. Boreman
Clerk of the Board
Board of Supervisors
City and County of San Francisco
235 City Hall
San Francisco, CA 94102

Subject: State Preemption Of Control
Of Ammunition For Firearms

Dear Mr. Boreman:

This is in response to your request on behalf of Supervisor Alfred J. Nelder whether control of ammunition for firearms is preempted by State law as the City Attorney's Letter Opinion No. 75-108 stated on the licensing and registration of firearms.

Local legislation is invalid if it attempts to impose additional requirements in a field that is preempted by general law. One of the tests to determine whether a field has been preempted by general law is whether the subject matter has been so fully and completely covered by general law as to clearly indicate that it has become exclusively a matter of State concern. (See Galvan v. Superior Court (1969) 70 Cal.2d 851, 859.)

Sections 12301 - 12312 of the Penal Code contain regulations regarding destructive devices. Section 12301 includes as a destructive device any fixed ammunition greater than .60 caliber other than shotgun ammunition. Section 12305 requires any dealer, manufacturer,

1906

1906

1906



1906

1906

1906

1906

1906

1906

1906

1906

1906

1906

1906

1906

1906

1906

1906

1906

1906

1906

1906

1906

1906

1906

1906

1906

Mr. Gilbert H. Boreman

2

July 19, 1977

importer, exporter or business user of destructive devices to obtain a permit from the State Department of Justice. Section 12306 requires anyone possessing or transporting any destructive device for non-business purposes to obtain a permit from the Department of Justice. Section 12304 prohibits the sale, possession or transport of fixed ammunition of a caliber greater than .60 caliber unless licensed. And Section 12307 deems the possession of a destructive device a public nuisance subject to injunction against possession and requiring the destruction of any such device. Other sections of the Penal Code (Sections 12303.1, 12303.2, 12303.3, 12308, 12309 and 12312) make conduct in connection with a destructive device a felony.

Thus, the sale, manufacture, importation, possession or transportation of destructive devices, including fixed ammunition greater than .60 caliber, is prohibited unless done pursuant to permit and certain activities in connection with destructive devices are made criminal offenses. Clearly, then, it would appear that the entire subject matter of the control of destructive devices has been so completely covered as to indicate an intent by the Legislature to make the subject of State concern. In this circumstance, the omission of fixed ammunition less than .60 caliber and shotgun ammunition could not reasonably be construed to reflect a legislative intent to allow local option in controlling destructive devices or criminal activity relating thereto. (See In re Lane (1962) 58 Cal.2d 99.)

You are advised, therefore, that in my opinion the control of ammunition for firearms has been preempted by general law as it appears in Sections 12301 - 12312 of the Penal Code.

Very truly yours,

THOMAS M. O'CONNOR
City Attorney

SF City Attorney

Letter Opinion No. 77-21

July 21, 1977

Mr. John Walsh
General Manager, Personnel
Civil Service Commission
151 City Hall
San Francisco, California 94102

Subject: Priority of Promotional Civil Service Lists
Over Entrance Lists

Dear Mr. Walsh:

This is in reply to your request for a clarification of my Opinion No. 63-31 with reference to the priority of promotional and entrance civil service lists for the same position.

In Opinion No. 63-31, I concluded that "the Civil Service Commission is required to exhaust any list established by a promotional examination before it can certify persons from a list established through an entrance examination."

The question now presented by your request is whether a promotional list which is established subsequent to an entrance list for the same position has priority over the earlier established entrance list.

Section 8.326 of the Charter provides in pertinent part:

"Except as specifically provided for in Section 8.327 [Promotions in Uniformed Forces of Police and Fire Departments], whenever it deems it to be practicable, the civil service commission

1000

1000

1000

1000

1000

1000

1000

1000

1000

1000

1000

1000

1000

1000

1000

1000

1000

1000

1000

1000

1000

1000

1000

1000

1000

1000

1000

1000

Mr. John Walsh

2

July 21, 1977

shall provide for promotion in the service on the basis of such examinations and tests as the commission may deem appropriate. . ."

This section has been interpreted to mean that if there are sufficient numbers of qualified persons in city and county service, the Civil Service Commission is required to give a promotional examination. (Allen v. McKinley, 18 Cal.2d 697.)

Civil Service Rules have established the priority of eligibility lists. Section 10.02 of the Civil Service Rules provides:

"Should more than one eligible list exist for a specific classification, the priority of eligible lists is as follows: Promotional lists have priority over entrance lists regardless of adoption dates; earlier lists have priority over later lists."

Under this section and in accordance with Section 8.326 of the Charter, it is my opinion that promotional lists have priority over entrance lists for the same position even though the entrance lists may have been established before the promotional lists.

In my opinion, that portion of Section 10.02 of the Civil Service Rules which provides that "earlier lists have priority over later lists", refers to earlier promotional lists having priority over later promotional lists, and earlier entrance lists having priority over later entrance lists. This is the only reasonable and common sense construction which can be given under the charter requirement that promotion in the service is required whenever practicable.

It is a general rule of statutory construction that legislative intent should be gathered from the whole act rather than isolated parts; and effect should be given to the statute as a whole so that no part or provision will be useless or meaningless. (Hanley v. Murphy, 40 Cal.2d 572; 45 Cal.Jur.2d, Statutes § 117.) In reading Section 10.02 of the Civil Service Rules as a whole, it must be interpreted to mean that promotional lists have priority over entrance lists regardless of when established; and that earlier promotional lists have

Page 100

The first part of the paper is devoted to a discussion of the various methods which have been proposed for the determination of the rate of reaction between a radical and a molecule. The most common method is the use of a stopped-flow apparatus, which allows the reaction to be initiated and the concentration of the reactants to be measured at very short intervals of time. This method is particularly suitable for reactions which are very fast, and for which the rate of reaction is not affected by the concentration of the reactants. Another method is the use of a laser flash photolysis apparatus, which allows the reaction to be initiated by a short pulse of light, and the concentration of the reactants to be measured at very short intervals of time. This method is particularly suitable for reactions which are very fast, and for which the rate of reaction is not affected by the concentration of the reactants. A third method is the use of a continuous-flow apparatus, which allows the reaction to be initiated by a continuous flow of reactants, and the concentration of the reactants to be measured at very short intervals of time. This method is particularly suitable for reactions which are very fast, and for which the rate of reaction is not affected by the concentration of the reactants. The second part of the paper is devoted to a discussion of the various methods which have been proposed for the determination of the rate of reaction between a radical and a molecule. The most common method is the use of a stopped-flow apparatus, which allows the reaction to be initiated and the concentration of the reactants to be measured at very short intervals of time. This method is particularly suitable for reactions which are very fast, and for which the rate of reaction is not affected by the concentration of the reactants. Another method is the use of a laser flash photolysis apparatus, which allows the reaction to be initiated by a short pulse of light, and the concentration of the reactants to be measured at very short intervals of time. This method is particularly suitable for reactions which are very fast, and for which the rate of reaction is not affected by the concentration of the reactants. A third method is the use of a continuous-flow apparatus, which allows the reaction to be initiated by a continuous flow of reactants, and the concentration of the reactants to be measured at very short intervals of time. This method is particularly suitable for reactions which are very fast, and for which the rate of reaction is not affected by the concentration of the reactants.

Letter Opinion No. 77-21

Mr. John Walsh

3

July 21, 1977

priority over later promotional lists as do earlier entrance lists over later entrance lists. This construction is consistent with Section 8.326 of the Charter which requires promotion in the service whenever practicable.

Therefore, I reaffirm Opinion No. 63-31 and conclude that promotional civil service lists, whenever established, have priority over earlier entrance lists for the same position.

Very truly yours,

THOMAS M. O'CONNOR
City Attorney.

Dear Mr. [Name]

I have the pleasure to inform you that your application for admission to the [Program] has been accepted. You will receive a letter from the [Institution] regarding the details of your admission.

We are pleased to have you join our community and look forward to your arrival.

Sincerely,

[Signature]

[Name]
[Title]

SF City Attorney

≡ Letter Opinion No. 77-22

July 21, 1977

Charles R. Gain, Chief
San Francisco Police Department
850 Bryant Street
San Francisco, California 94103

Subject: Authority to Make Non-Civil or Limited Tenure
Appointments

Dear Chief Gain:

You have asked my opinion whether Section 8.332 of the Charter, which authorizes temporary non-civil service appointments, is in conflict with Section 8.331 of the Charter relating to limited tenure appointments.

Specifically, your inquiry is based on the following provision of Section 8.331 of the Charter:

"Non-civil service appointments, in the absence of civil service eligibles as provided in sections 8.320, 8.321, 8.324 and 8.330 of this charter, shall not be authorized if applicants qualified for limited tenure appointments are available."

Your request raises the issue whether a temporary vacancy in a promotive rank in the Police Department should be filled by a non-civil service appointment or by a limited tenure appointment. Stated another way, the question is whether the Police Department has discretion to select the type of temporary appointment or whether one form has priority over the other.

ARTICLES

REVIEWS

NOTES

BOOK REVIEWS

ANNOUNCEMENTS

MEMBERSHIP

EDITORIAL

INDEX

ADVERTISING

CONTENTS

EDITORIAL BOARD

EDITORIAL ASSISTANT

EDITORIAL OFFICE

Charles R. Gain

2

July 21, 1977

In the facts presented by you, there is no permanent civil service list from which appointments can be made because the subject "informational" lists for Q50 Sergeant and Q35 Assistant Inspector have been challenged in the case of Officers for Justice v. Civil Service Commission, United States District Court, No. C-73-0657 RFP, and therefore, the tentative lists have not been adopted. Accordingly, there are no eligible lists for permanent appointment to the Sergeant or Assistant Inspector ranks.

The pertinent portions of Section 8.331 of the Charter which authorizes limited tenure appointments are as follows:

"When in time of war declared by the Congress of the United States eligibles are not available for appointment from registers established through the regular examination procedure as provided under sections 8.320, 8.321, 8.324 and 8.330 hereof, the civil service commission may qualify applicants for wartime appointments to positions through informal and non-competitive tests."

The above quoted language authorizes a limited tenure appointment when there is no civil service eligible list. The appointment is made after informal and non-competitive tests conducted by the Civil Service Commission under such conditions as specified by Civil Service Rules (Rule 19). The tests shall consist of appraisal of qualifications, evaluation of education, experience and other applicable factors (Rule 19.05). The minimum qualifications for a permanent limited tenure appointment shall be the same as those stated in the latest examination announcement for the particular classification or in its absence, the official class specification (Rules 19.06, 19.11). Limited tenure appointments to promotive positions shall be offered to the senior employee in the next lower rank who meets the minimum requirements of the latest promotive examination announcement (Rule 19.11).

Non-civil service appointments for periods not to exceed 130 working days are authorized under Section 8.332 of the Charter. Such appointments can be made (1) when no list of eligibles exists or no eligible is available on an existing

The first part of the document discusses the importance of maintaining accurate records of all transactions. It emphasizes that every entry, no matter how small, should be recorded to ensure the integrity of the financial data. This includes not only sales and purchases but also expenses and income. The document further states that regular audits are necessary to verify the accuracy of these records and to identify any discrepancies. It also mentions that proper record-keeping is essential for tax purposes and for providing a clear audit trail to stakeholders.

The second part of the document focuses on the role of management in overseeing the financial operations. It highlights that management should establish clear policies and procedures for financial reporting and ensure that all employees are trained to follow these guidelines. The document also discusses the importance of timely reporting of financial information to the board of directors and other relevant parties. It notes that management should also be responsible for ensuring that the company's financial statements are prepared in accordance with the applicable accounting standards and regulations.

The third part of the document addresses the issue of financial control. It explains that effective financial control requires a strong system of internal controls that can detect and prevent errors and fraud. This includes implementing segregation of duties, requiring proper authorization for transactions, and conducting regular reconciliations. The document also mentions that management should monitor the company's financial performance closely and take corrective action if any issues are identified. It concludes by stating that a robust financial control system is crucial for the long-term success and sustainability of the organization.

Charles R. Gain

3

July 21, 1977

list for the position requisitioned, and (2) immediate service in the position is required by the appointing officer. If no eligible list exists, the Civil Service Commission may authorize the appointing officer to make a non-civil service or emergency appointment for a period not to exceed 130 working days in any one fiscal or calendar year.

Both limited tenure and non-civil service appointments can be authorized only if there are no civil service eligible lists available. That condition is present in the subject matter since both the Q50 Sergeant and Q35 Assistant Inspector lists are not adopted because of litigation challenging their validity. (Officers for Justice v. Civil Service Commission.) Such lists will not be adopted until the court renders a decision in that case.

The language of Section 8.331 of the Charter which provides that non-civil service appointments shall not be authorized if qualified applicants for limited tenure appointments are available, must be interpreted in light of the duration of the appointment and whether there is an anticipated civil service examination to establish a register of eligibles for permanent appointment. Limited tenure appointments are generally made for prolonged periods of time and where there is no anticipated examination to establish a civil service list for the position. However, non-civil service appointments are utilized where there is a short term immediate need to fill a position and no eligible list exists. Such appointment is limited in duration by its very terms.

Section 8.331 of the Charter which authorizes limited tenure appointments, also requires the Civil Service Commission to conduct examinations to maintain adequate registers of eligibles. Section 8.331 provides in part:

" . . . The civil service commission shall make every effort consistent with current conditions to maintain adequate registers of eligibles established through the regular examination procedure. . . "

This requirement can best be accomplished by means of short term non-civil service appointments because the limited duration of the emergency appointment encourages the Civil Service Commission to prepare and conduct a civil service examination for the position. But limited tenure appointments are generally for

Charles R. Gain

4

July 21, 1977

prolonged periods and once the appointment is made, there is no urgency in preparing a register of eligibles for that position through civil service examination. Thus, non-civil service appointments promote the requirement that the Civil Service Commission establish and maintain current eligible lists for appointments.

The Civil Service Commission has adopted a policy consistent with its Charter requirement to maintain current eligible rosters through regular examinations. It requires that where no eligible list exists, then non-civil service appointments will be made in preference to limited tenure appointments. It is a general rule of the Civil Service Commission to authorize a non-civil service appointment only if (1) an examination for the position is in progress or has been announced, and (2) the non-civil service appointee is an applicant for the particular examination. This policy advances the goals of the Commission to make every effort to maintain regular registers of eligibles through civil service examination procedure.

In my opinion, the subject language of Section 8.331 which prohibits non-civil service appointments where qualified applicants for limited tenure positions are available, does not operate to give priority of limited tenure appointments over non-civil service appointments. That language, in my opinion, requires a limited tenure appointment only if an eligible list cannot be established in the immediate future and there is an immediate need to fill the position for an extended period. In that event, a single limited tenure appointment would be less disruptive of the long-term operation of the department than numerous non-civil service appointments. However, if the need is a temporary one and where a civil service list is in the process of being established, then a non-civil service appointment would be appropriate in order to temporarily provide the necessary services pending creation of the permanent civil service list.

In the instant fact situation, it is my opinion that a non-civil service appointment would be justified and required. The civil service eligible lists for Q50 Sergeant and Q35 Assistant Inspector have been tentatively established subject only to resolution of the court challenge as to their validity.

THE HISTORY OF THE

THE HISTORY OF THE

THE HISTORY OF THE

THE HISTORY OF THE

Charles R. Gain

5

July 21, 1977

The Police Department has demonstrated that there is an immediate need to fill Sergeant and Assistant Inspector positions because of a lack of personnel to supervise newly appointed Q2 Police Officers. These temporary or emergency non-civil service appointments will last 130 working days or approximately 6 months. It is anticipated that the litigation challenging the Sergeant and Assistant Inspector examinations will be terminated prior to the expiration of the non-civil service appointments. However, if the litigation is not concluded within that period, and in the event that continued temporary services are needed, then new non-civil service appointments would be required to replace those which had expired.

Limited tenure appointments would appear to be improper in these circumstances because tentative eligible lists have already been established. In this case, a temporary non-civil service appointment fulfills the need for supervising officers on an interim basis while the litigation is pending. It does not seem that a limited tenure appointment for such a short duration would be appropriate especially where tentative civil service lists are available subject only to the court's decision after trial. The case is set for trial on November 1977, and if there is an immediate need to appoint Sergeants and Assistant Inspectors during the interim period, it is my opinion that a non-civil service appointment would be justified.

In conclusion, it is my opinion that the restrictive language of Section 8.331 of the Charter does not establish a priority of limited tenure appointments over non-civil service appointments under the fact situation presented by your request. You are therefore authorized to make non-civil service appointments to the subject positions under the provisions of Section 8.332 of the Charter.

Very truly yours,

THOMAS M. O'CONNOR
City Attorney

July 28, 1977

Mr. Patrick J. Mahler, Director
Employee Relations Division
Board of Supervisors
252 City Hall
San Francisco, Calif.

Subject: Graduated Pay Scales for
Muni. Operators

Dear Mr. Mahler:

By letter dated July 8, 1977, you point out that the two transit systems certified for 1977-1978 by the Civil Service Commission as paying the highest hourly wage, the average of which will establish the maximum possible hourly rate for transit operators of the Municipal Railway, and all seven of the transit systems in the United States paying the highest hourly rates for operators have graduated payment scales for operators, while San Francisco pays a single rate to all operators regardless of longevity or seniority. In this connection you make the following inquiry.

Question: Would it be contrary to Charter Sec. 8.404 for City to pay its operators on a graduated scale provided that the top step of the graduated scale is equal to the average of the two top pay rates certified by the Civil Service Commission?

CONCLUSION

It would not be legal to pay operators on a graduated scale under existing Charter language.

DISCUSSION

Paragraphs (a) and (b) of Charter Section 8.404 provide as follows:

1871

1872

1873

1874

1875

1876

1877

1878

1879

1880

1881

1882

1883

1884

Mr. Patrick J. Mahler

2

July 28, 1977

"(a) On or before the first Monday of August of each year, the civil service commission shall certify to the board of supervisors for each classification of employment the average of the two highest wage schedules in effect on July 1st of that year for comparable platform employees and coach or bus operators of other surface street railway and bus systems in the United States operated primarily within the municipalities having each a population of not less than 500,000 as determined by the then most recent census taken and published by the director of the census of the United States, and each such system normally employing not less than four hundred (400) platform employees or coach or bus operators, or platform employees, coach and bus operators.

"(b) The board of supervisors shall thereupon fix a wage schedule for each classification of platform employees and coach and bus operators of the municipal railway which shall not be in excess of the average of the two highest wage schedules so certified by the civil service commission for each such classification."

Paragraph (e) of Charter Section 8.404 states as follows:

"(e) The terms wage schedule and wage schedules wherever used in this section are hereby defined and intended to include only the maximum rate of pay provided in each such wage schedule."

The second subparagraph of paragraph (g) of Charter Section 8.404 reads:

"On recommendation of the civil service commission the board of supervisors shall establish a rate of pay for trainee platform men and bus or coach operators at a level reflecting the current labor market but below the basic hourly rate for motorman, conductor and bus operator."

The charter presently provides specifically for a lower rate of pay for trainee operators (Sec. 8.404(g), above). It also provides that the board of supervisors shall "... fix a wage

The first of these is the question of the origin of the human race. It is generally accepted that the human race originated in Africa, and that it spread from there to other parts of the world. This is supported by the fact that the greatest genetic diversity is found in African populations. The second question is the question of the relationship between the different races of man. It is generally accepted that the different races of man are descended from a common ancestor, and that they have diverged from one another as a result of geographical isolation and natural selection. The third question is the question of the development of the human mind. It is generally accepted that the human mind has developed from a primitive state to a more advanced state, and that this development has been influenced by a number of factors, including environment, education, and social organization.

The fourth question is the question of the future of the human race. It is generally accepted that the human race will continue to develop, and that this development will be influenced by a number of factors, including science, technology, and social organization. The fifth question is the question of the role of the human race in the world. It is generally accepted that the human race has a responsibility to the world, and that this responsibility is to use the resources of the world in a way that is sustainable and equitable. The sixth question is the question of the relationship between the human race and the natural world. It is generally accepted that the human race is a part of the natural world, and that it has a responsibility to protect the natural world.

The seventh question is the question of the role of the human race in the universe. It is generally accepted that the human race is a part of the universe, and that it has a responsibility to explore the universe. The eighth question is the question of the role of the human race in the history of the world. It is generally accepted that the human race has played a significant role in the history of the world, and that this role will continue to be significant in the future. The ninth question is the question of the role of the human race in the development of the world. It is generally accepted that the human race has played a significant role in the development of the world, and that this role will continue to be significant in the future. The tenth question is the question of the role of the human race in the future of the world. It is generally accepted that the human race will continue to play a significant role in the future of the world, and that this role will be influenced by a number of factors, including science, technology, and social organization.

Mr. Patrick J. Mahler

3

July 28, 1977

schedule . . . [singular] . . . for each classification of platform employees and coach and bus operators . . ." (Sec. 8.404(b), above). No qualification of "wage schedule" for transit operators is present in the language. By way of contrast, the salaries of policemen and firemen, which are also set by the averaging process, are determined under charter language which defines "rates of compensation" to apply ". . . only to a basic amount of wages, with included range scales. . ." (Sec. 8.405(a)(4) and Sec. 8.405(c)(4)). Also, in the provisions for setting wages and salaries for City employees generally it is provided in part:

" . . . for those classifications of employment in which the practice is customary, the proposed schedules of compensation shall provide for minima, intermediate, and maxima salaries and for a method of advancing the salaries of employees from the minimum to the intermediate and to the maximum with due regard to seniority of service. . . ." (Ch. Sec. 8.401.)

In view of the history of Charter Sec. 8.401 and Sec. 8.404, the latter section is an exception to the former, and the restrictions and limitations on wage setting in Sec. 8.401 do not apply to transit operators because of the existence of Sec. 8.404.

As a matter of construction of charter language then, since the voters have approved including range scales in setting salaries for policemen and firemen, and have approved minimum, intermediate and maximum stages in setting salaries for miscellaneous employees and, with respect to transit operators under Charter Sec. 8.404 have made no such provision, other than for a trainee rate, it is my conclusion that except for trainees, there can be only one hourly rate for each classification of platform employees, coach and bus operators.

This conclusion is supported by the history of carmen's wage setting under the charter. In 1947 (Res. Ch. 2 Stats. of Calif. 1947, p. 3264) Section 151.3 was added to the charter and provided in paragraph (A) for certification of the two highest wage schedules, and in paragraph (B):

"The board of supervisors shall thereupon fix wage schedules . . . [plural] . . . for platform employees and bus operators . . . which shall be the average of the two highest wage schedules so certified by the civil service commission."

ARTICLE

1

The first part of the article discusses the importance of the research and the methodology used. It highlights the challenges faced by the researchers and the steps taken to overcome them. The second part of the article presents the results of the study and discusses their implications for the field. The third part of the article concludes the study and offers suggestions for future research.

The results of the study show that there is a significant difference between the two groups. This difference is statistically significant and has practical implications. The findings suggest that the intervention is effective in improving the outcomes of the study. The authors conclude that the results of the study are promising and warrant further investigation.

The authors acknowledge the limitations of the study and the need for further research. They also thank the participants and the funding agency for their support. The article is published in the Journal of the American Psychological Association.

The authors are grateful to the reviewers for their comments and suggestions. They also thank the publisher for their support. The article is published in the Journal of the American Psychological Association.

The authors are grateful to the reviewers for their comments and suggestions. They also thank the publisher for their support. The article is published in the Journal of the American Psychological Association.

The authors are grateful to the reviewers for their comments and suggestions. They also thank the publisher for their support. The article is published in the Journal of the American Psychological Association.

Mr. Patrick J. Mahler

4

July 28, 1977

In Opinion No. 4161 of July 6, 1948, the then City Attorney advised the Finance Committee of the Board of Supervisors that the use of the plural in "schedules" contemplated a certification for bus operators and a certification for platform men. This, of course, was in the days of two-man streetcars and one-man buses, and a burning issue of the day was whether bus operators should be paid more than conductors and motormen. The opinion also held that, if the Civil Service Commission should certify entrance, intermediate and maximum wages paid to either platform men or bus operators, then the Board of Supervisors would have to set the wage rates accordingly.

The 1948 opinion is no longer applicable because, in June 1954, Charter Section 151.3 was amended (Res. Ch. 16, Statutes of 1955) in that the wage schedule the board of supervisors was to fix under (B) above, became singular, instead of plural, and paragraph (F) was added to read in part:

"The terms wage schedule and wage schedules whenever used in this section are hereby defined and intended to include only the maximum rate of pay provided in each such wage schedule . . ."

Despite other changes since 1955, the pertinent language of the 1955 amendments is present in today's Charter Sec. 8.404, quoted at the beginning of this opinion.

One other aspect of your question deserves comment, in that it implies that at least the top step of a graduated scale would have to equal the average of the two top pay rates certified by the Civil Service Commission. Paragraph (b) of Section 8.404 states only that the wage schedule to be fixed by the board "shall not be in excess of the average of the two highest wage schedules so certified by the civil service commission." This language sets an upper limit on the wage schedule, and not a mandatory level of wages, and results from another change made in the 1955 amendment. Prior to that amendment, the average of the two highest wage schedules became the wage schedule without discretion in the board to set a higher or a lower rate.

You are so advised.

Very truly yours,

THOMAS M. O'CONNOR
City Attorney

SF City Attorney

Letter Opinion No. 77-24

6/28/77

July 28, 1977

RECEIVED

Hon. Quentin L. Kopp, President
Board of Supervisors
235 City Hall
San Francisco, Calif.

Subject: Charter Section 8.311; Contribution
to Political Campaigns by Civil
Service Employees

Dear Supervisor Kopp:

This office has reviewed your letter of July 8, 1977 in which you pose further questions regarding the validity of Charter Section 8.311 insofar as it prohibits political activities of City employees. In particular, you refer to that portion of Section 8.311 which prohibits contributions by Civil Service employees and eligibles in support of or in opposition to the appointment or election of City and County officials.

The constitutional invalidity of Section 8.311 has already been the subject of discussion in two former opinions - No. 74-54, dated May 28, 1974, and No. 77-9, addressed to you on April 11, 1977. The latter opinion is attached to this letter for your information.

The conclusions reached in those letters apply to the instant case. The prohibition against contributions by City employees is overly broad and does not comply with the standards articulated in Forte v. Civil Service Commission 61 Cal.2d 331; Kinnear v. City and County of San Francisco 65 Cal.2d 341; and Bagley v. Washington Township Hospital District 65 Cal.2d 499.

In addition, Chapter 9.5 of the Government Code, Sections 3201-3209 governs exclusively the regulation of political activities of the employees of the City and County of San Francisco. Any local regulation, whether contained in the Charter or set forth by ordinance which goes beyond the narrow delegation set down in Section 3207 of the Government Code is invalid.


Hon. Quentin L. Kopp

2

July 28, 1977

For the reasons set forth above, you are advised that there is no valid prohibition in the Charter against political contributions by Civil Service employees or eligibles to election campaigns in San Francisco.

Very truly yours,


THOMAS M. O'CONNOR
City Attorney

and the same effect

the same effect

the same effect

the same effect

the same effect

the same effect

the same effect

July 29, 1977

Mr. John J. Walsh
General Manager, Personnel
Civil Service Commission
151 City Hall
San Francisco, California 94102

Subject: County Parole Commission's Appointment of
Executive Director and Assistant Secretary

Dear Mr. Walsh:

This is in reply to your request for opinion as to who is the appointing authority for the newly established positions of 8470 Executive Director, County Parole Commission, and 8464 Assistant Secretary, County Parole Commission; and whether the Civil Service Commission has any authority with regard to the establishment of civil service positions.

State law provides that in each county of the state, there is a county board of parole commissioners consisting of (1) the sheriff, (2) the probation officer, and (3) a member not a public official selected from the public by the presiding judge of the superior court (Section 3075, Penal Code). The parole board shall act at regularly called meetings; and shall make and establish rules and regulations regarding the parole of prisoners imprisoned in the county jail. (Section 3076, Penal Code.)

In accordance with state law, the City and County of San Francisco has created, and there is presently functioning, a board of parole commissioners consisting of the sheriff, the adult probation officer and a member of the public. The board

1947 - 1948

1949 - 1950

1951 - 1952

1953 - 1954

1955 - 1956

Mr. John J. Walsh

2

July 29, 1977

had previously functioned without an executive director, assistant secretary or other personnel. Recently, federal funds were made available for several positions to staff the county parole board with an executive director and support personnel. Subsequently, the mayor recommended that these positions be funded by the city and county as regular civil service positions; and the Board of Supervisors created both positions by appropriation ordinance (Section 8.200, Charter).

The questions presented by you are as follows:

"1. Who is the appointing authority for the subject two positions, the Sheriff or the County Parole Commission?

"2. Does the Civil Service Commission at this time have any authority with regard to the 'establishment of civil service positions.'"

Question No. 1

The board of parole commissioners, being established under state law, must be distinguished from boards or commissions appointed by the mayor or otherwise provided by the Charter (Section 3.500, Charter). As to the latter, a board or commission established under Charter authority, is authorized to appoint a secretary, superintendent or other executive who shall not be subject to civil service unless otherwise specifically provided and such appointee serves at the pleasure of the board or commission (Section 3.500(h), Charter). Since the board of parole commissioners is created by state law, the provisions of Section 3.500 of the Charter are not applicable. Thus, the executive director of the board is a civil service position and does not serve at the pleasure of the board.

The board of parole commissioners has three members and no one of the members has any greater authority than the others. The individual members constitute the "board" and can act at meetings only if a quorum or two-thirds of the members are present (Section 3076, Penal Code).

THE UNIVERSITY OF CHICAGO
DEPARTMENT OF CHEMISTRY
RECEIVED
JAN 10 1911

TO THE UNIVERSITY OF CHICAGO
FROM THE UNIVERSITY OF CHICAGO
DEPARTMENT OF CHEMISTRY

THE UNIVERSITY OF CHICAGO
DEPARTMENT OF CHEMISTRY
RECEIVED
JAN 10 1911

Mr. John J. Walsh

3

July 29, 1977

The board of parole commissioners has the power to submit a requisition to the Civil Service Commission to fill the position of executive director. Upon filling that position, the executive director becomes the "appointing officer" of the board with all the duties and powers provided by Section 3.501 of the Charter. Therefore, the executive director, as appointing officer, is empowered to submit requisitions to the Civil Service Commission to fill any subordinate civil service positions within that department; and act as the appointing officer under the civil service provisions of the Charter "for the appointing, disciplining and removal" of such employees.

The executive director and assistant secretary are currently designated in the Sheriff's budget. This should be corrected by deleting those positions from the Sheriff's budget and adding them as a separate budget item for the board of parole commissioners.

In specific answer to your question, the board of parole commissioners is the appointing authority for its executive director and the executive director who is so appointed is the appointing officer for all subordinate employees of that department.

Question No. 2

Section 8.200 of the Charter provides that positions in any office, agency or department of the city and county are created by appropriation ordinance of the Board of Supervisors; and before a position is created, the Civil Service Commission shall give the proper designation and classification to such position based on the duties and responsibilities thereof. It is clear that it is the Board of Supervisors and not the Civil Service Commission who creates or abolishes city and county positions.

The subject positions of executive director and assistant secretary to the board of parole commissioners have already been established by appropriation ordinance enacted by the Board of

The first of these is the question of the origin of the human race. It is generally accepted that the human race originated in Africa, and that it spread from there to other parts of the world. This is supported by the fact that the greatest variety of human types is found in Africa, and that the most primitive types are also found there.

The second question is the question of the development of the human race. It is generally accepted that the human race has developed from a common ancestor, and that it has evolved into the various types that we see today. This is supported by the fact that the human race has a common set of characteristics, and that these characteristics have changed over time.

The third question is the question of the relationship between the human race and other races. It is generally accepted that the human race is a single race, and that it is not divided into separate races. This is supported by the fact that the human race has a common set of characteristics, and that these characteristics are found in all human beings.

The fourth question is the question of the future of the human race. It is generally accepted that the human race will continue to evolve, and that it will develop into new types. This is supported by the fact that the human race has a common set of characteristics, and that these characteristics have changed over time.

The fifth question is the question of the role of the human race in the world. It is generally accepted that the human race has a unique role to play in the world, and that it is responsible for the future of the world. This is supported by the fact that the human race has a common set of characteristics, and that these characteristics have changed over time.

The sixth question is the question of the relationship between the human race and the environment. It is generally accepted that the human race is a part of the environment, and that it is affected by the environment. This is supported by the fact that the human race has a common set of characteristics, and that these characteristics have changed over time.

The seventh question is the question of the relationship between the human race and other races. It is generally accepted that the human race is a single race, and that it is not divided into separate races. This is supported by the fact that the human race has a common set of characteristics, and that these characteristics are found in all human beings.

The eighth question is the question of the future of the human race. It is generally accepted that the human race will continue to evolve, and that it will develop into new types. This is supported by the fact that the human race has a common set of characteristics, and that these characteristics have changed over time.

Mr. John J. Walsh

4

July 29, 1977

Supervisors. Therefore, the Civil Service Commission has no authority with regard to the establishment of those positions.

Very truly yours,

THOMAS M. O'CONNOR
City Attorney

THE JOURNAL OF THE

THE JOURNAL OF THE

THE JOURNAL OF THE

THE JOURNAL OF THE

THE JOURNAL OF THE

SF City Attorney

July 11, 1977

DOCUMENTS

OCT 7 1977

SAN FRANCISCO
PUBLIC LIBRARY

Honorable Andrew Casper, Chief
San Francisco Fire Department
260 Golden Gate Avenue
San Francisco, California 94102

Subject: Attendance of Employee Members at Meetings of Retirement
Board and Health Service Board During Working Hours

Dear Chief Casper:

This is in response to your oral request for my opinion whether it is required that you grant members of your Department, who have been elected to the Retirement Board and Health Service Board, time off from their regular assignments to attend meetings of those Boards.

Both the Retirement Board and Health Service Board are created by specific provisions of the Charter. (Sections 3.670 and 3.680) The Charter prescribes that each Board shall have as members three employees of the City and County who are elected by the members of the Retirement System and Health Service System, respectively.

These Charter provisions evidence an intention that employees of the City and County play an active role in the management of the Retirement System and the Health Service System. For those employees elected to membership on these Boards, the duties related to such membership, including attendance at meetings, are incidental to their normal duties.

Since the Charter requires that there be employee members on these Boards, there is an implicit requirement that such employee members be permitted to attend meetings of their Boards.

1954

THE UNIVERSITY OF CHICAGO

THE UNIVERSITY OF CHICAGO

THE UNIVERSITY OF CHICAGO

THE UNIVERSITY OF CHICAGO

THE UNIVERSITY OF CHICAGO

THE UNIVERSITY OF CHICAGO

THE UNIVERSITY OF CHICAGO

THE UNIVERSITY OF CHICAGO

THE UNIVERSITY OF CHICAGO

Hon. Andrew Casper

-2-

July 11, 1977

Accordingly, each such employee member should be permitted to be away from his or her regular assignment to attend such meetings, subject, however, to the condition that the efficient operation of the employee's department will not suffer as a result.

You are advised accordingly.

Very truly yours,

THOMAS M. O'CONNOR
City Attorney

THE UNIVERSITY OF CHICAGO

PHYSICS DEPARTMENT

1964

RECEIVED

TO THE PHYSICS DEPARTMENT FROM THE PHYSICS DEPARTMENT
OF THE UNIVERSITY OF CHICAGO
RECEIVED

RECEIVED

RECEIVED

RECEIVED

July 12, 1977

DOCUMENTS

OCT 7 1977

SAN FRANCISCO
PUBLIC LIBRARY

Hon. George R. Moscone
Mayor
200 City Hall
San Francisco, Calif.

Subject: Use of Hotel Tax to Fund Bond Interest
Payments of the San Francisco Housing
Authority for Purchase of International
Hotel and Various Questions

Dear Mayor Moscone:

This is in response to your request for an opinion relating to the acquisition of the International Hotel by the San Francisco Housing Authority. The questions posed are as follows:

1. Assuming the Housing Authority authorized issuance of bonds for acquisition of the International Hotel, may the proceeds from the Transient Occupancy Tax (Hotel Tax) be used to defray bond interest or redemption cost of the San Francisco Housing Authority.
2. May the City and County of San Francisco use community development funds for the acquisition and rehabilitation of the International Hotel by the San Francisco Housing Authority?
3. What priority can be given to current residents of the International Hotel if the parcel is acquired by the San Francisco Housing Authority?

Your questions will be answered in the order presented.

The Transient Occupancy Tax, or Hotel Tax, is provided for in Part III of the San Francisco Municipal Code, Article 7 commencing with Section 501 to and including Section 518. After various definitions, Section 502 of the Code provides that there shall be a tax of six percent (6%) on the rent for every occupancy

ORIGINAL ARTICLES

1934

1934

1934

1934

1934

1934

1934

1934

1934

1934

1934

1934

1934

1934

Hon. George R. Moscone

2

July 12, 1977

of a guest room in a hotel in the City and County on and after January 1, 1973. Assuming that the Board of Supervisors made no other provision in the ordinance, all funds collected would be deposited in the general fund of the City and County used to defray the cost of operation of the government of the City and County of San Francisco. However, the Board of Supervisors did enact Section 515 of Part III which provides in paragraph 2 thereof that the Tax Collector shall transmit all monies collected pursuant to this article to the Treasurer for deposit to the credit of a special fund to be known as the "Hotel Room Tax Fund." The balance of Section 515 provides that the money will be expended solely for the following purposes. At a tax rate of six percent (6%), or six cents on each dollar, two cents is allocated to the construction of a convention center in Yerba Buena Center; one-half cent to facilitate the construction of low-income housing in the Yerba Buena Center Redevelopment Project Area; one-half cent to the retirement of bonds issued for the construction and reconstruction of Candlestick Park; and the balance, or three cents, to be available for publicit and advertising purposes as administered by the Chief Administrative Officer. Any change in the above allocations would require an amendment to the ordinance by the Board of Supervisors. In addition, Section 515 of the San Francisco Municipal Code sets forth the allocation of how the proceeds of the Hotel Room Tax can be expended and provides that 8.3% of the total amount of the monies collected and deposited to the Hotel Room Tax Fund would be specifically appropriated to the Office of the San Francisco Administrative Officer to facilitate the construction of low-income housing in the Yerba Buena Fund Redevelopment Project Area and "on certain parcels adjacent thereto.

It is apparent from the provisions of the ordinance that in order for monies to be diverted from the Hotel Room Tax Fund to fund the acquisition of the International Hotel it would require an amendment passed by the Board of Supervisors to so provide.

Bonds, if issued by the Housing Authority, would be obligations extended over a period of years providing for bond interest and redemption. In order for the Housing Authority to rely on the City and County to retire the bonds plus interest, it would be necessary to submit a proposition to the electorate pursuant to California Constitution Article 16, Section 18, which provides in part as follows:

The first part of the document discusses the importance of maintaining accurate records of all transactions and the role of the accounting system in providing reliable financial information. It highlights the need for transparency and accountability in financial reporting, particularly in the context of public sector organizations. The document also emphasizes the importance of regular audits and the role of external auditors in ensuring the integrity of the financial statements.

The second part of the document focuses on the implementation of the accounting system and the role of the accounting officer in ensuring that the system is properly maintained and that all transactions are recorded accurately. It discusses the importance of the accounting officer in providing advice and guidance to the management on financial matters and in ensuring that the organization complies with relevant financial regulations and standards.

The third part of the document discusses the role of the accounting system in providing information for decision-making and the importance of the accounting officer in ensuring that the system is able to provide timely and accurate information. It also discusses the importance of the accounting officer in ensuring that the system is able to provide information in a format that is easy to understand and use by the management.

The fourth part of the document discusses the role of the accounting system in providing information for the public and the importance of the accounting officer in ensuring that the system is able to provide information in a format that is easy to understand and use by the public. It also discusses the importance of the accounting officer in ensuring that the system is able to provide information in a format that is consistent with the requirements of the public sector accounting standards.

The fifth part of the document discusses the role of the accounting system in providing information for the management and the importance of the accounting officer in ensuring that the system is able to provide information in a format that is easy to understand and use by the management. It also discusses the importance of the accounting officer in ensuring that the system is able to provide information in a format that is consistent with the requirements of the public sector accounting standards.

The sixth part of the document discusses the role of the accounting system in providing information for the public and the importance of the accounting officer in ensuring that the system is able to provide information in a format that is easy to understand and use by the public. It also discusses the importance of the accounting officer in ensuring that the system is able to provide information in a format that is consistent with the requirements of the public sector accounting standards.

The seventh part of the document discusses the role of the accounting system in providing information for the management and the importance of the accounting officer in ensuring that the system is able to provide information in a format that is easy to understand and use by the management. It also discusses the importance of the accounting officer in ensuring that the system is able to provide information in a format that is consistent with the requirements of the public sector accounting standards.

The eighth part of the document discusses the role of the accounting system in providing information for the public and the importance of the accounting officer in ensuring that the system is able to provide information in a format that is easy to understand and use by the public. It also discusses the importance of the accounting officer in ensuring that the system is able to provide information in a format that is consistent with the requirements of the public sector accounting standards.

The ninth part of the document discusses the role of the accounting system in providing information for the management and the importance of the accounting officer in ensuring that the system is able to provide information in a format that is easy to understand and use by the management. It also discusses the importance of the accounting officer in ensuring that the system is able to provide information in a format that is consistent with the requirements of the public sector accounting standards.

The tenth part of the document discusses the role of the accounting system in providing information for the public and the importance of the accounting officer in ensuring that the system is able to provide information in a format that is easy to understand and use by the public. It also discusses the importance of the accounting officer in ensuring that the system is able to provide information in a format that is consistent with the requirements of the public sector accounting standards.

Hon. George R. Moscone

3

July 12, 1977

"§18. Debt limit; county, municipal and school; majority vote for repair, etc., of school buildings; election to exceed limit.

"Sec. 18. No county, city, town, township, board of education, or school district, shall incur any indebtedness or liability in any manner or for any purpose exceeding in any year the income and revenue provided for such year, without the assent of two-thirds of the qualified electors thereof, voting at an election to be held for that purpose"

The California Supreme Court in construing the constitutions held in the case of City of Palm Springs v. Ringwald (1959) 52 C.2d 620-627 as follows:

"[10] The purpose of section 18, Article XI, of the Constitution is not to interfere with the city's exercise of its discretion in determining for what objects of public convenience and welfare its power shall be exercised or for which money may be appropriated. It is designed to afford the people who are required to pay the cost of providing such objects of public convenience and welfare and opportunity to express their approval or disapproval of a long-term indebtedness. The constitutional provision does not prohibit the legislative body of the city from spending any or all of its current income for whatever it deems proper or necessary objects of public convenience or welfare. It simply provides that the legislative body may not encumber the general funds of the city beyond the year's income without first obtaining the consent of two thirds of the electorate."

In City of Palm Springs v. Ringwald, supra, the City of Palm Springs attempted to finance the construction of a parking facility to be financed by revenues pledged from various sources including the creation of a special fund to be supplied from future revenues from the city's sales and use taxes. The court in reviewing the sources of funding specifically held that the constitutional provision (then known as Section 18, Article XI, now Article 16, Section 18), prohibited the pledging of sales and use taxes. The

THE UNIVERSITY OF CHICAGO

PHYSICS DEPARTMENT

RECEIVED

THE UNIVERSITY OF CHICAGO

PHYSICS DEPARTMENT

THE UNIVERSITY OF CHICAGO

PHYSICS DEPARTMENT

THE UNIVERSITY OF CHICAGO

Hon. George R. Moscone

4

July 12, 1977

court, at page 627, stated that "The scope of section 18 of article XI clearly encompasses not alone property taxes but also the other types of 'income and revenue' taxes that produce revenue for the general fund."

In addition to pledging future revenue by a two-thirds vote of the electorate, there is another method for financing public improvements. This is known as lease financing which requires the annual rental payments to a public agency, such as the San Francisco Housing Authority, which lease rental payments would be sufficient to retire the bonds plus interest, the proceeds of which could be used to purchase the International Hotel. However, at the November 2, 1976 election the voters of San Francisco added section 7.309 to the Charter which requires majority voter approval in order for lease financing to occur.

Your second question that you raise concerns the use by the City and County of San Francisco of community development funds for the acquisition and rehabilitation of the International Hotel by the San Francisco Housing Authority. The regulations of the United States Department of Housing and Urban Development contemplate the use of community development funds for the acquisition and rehabilitation of structures for housing. At the present time there is an agreement between the City and County of San Francisco and Housing Authority authorizing the use of community development funds for the acquisition of the International Hotel with the funds to be repaid to the City and County by the Authority upon sale of the hotel to the present tenants. If it were to be contemplated that the Housing Authority would continue to operate the facilities after acquisition, a new resolution would have to be passed by the board of supervisors authorizing a new agreement with the Housing Authority.

Your third question relates to what priority would be given to current residents of the International Hotel if the building is acquired by the San Francisco Housing Authority. Section 34322 of the Health and Safety Code relating to Housing Authorities generally provides that dwelling accommodations can be leased only to persons of low-income and only at rentals within their financial reach, that the dwelling accommodations be safe and sanitary without overcrowding, that the Authority fix income limits for occupancy, taking into consideration the family size, composition, age and physical handicaps. Further, section 34322.2 of the Housing Authority laws provides a preference system for the selection of applicants. The Authority under the statute must adopt and promulgate regulations establishing a plan for selection

Hon. George R. Moscone

5

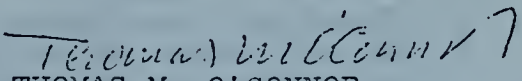
July 12, 1977

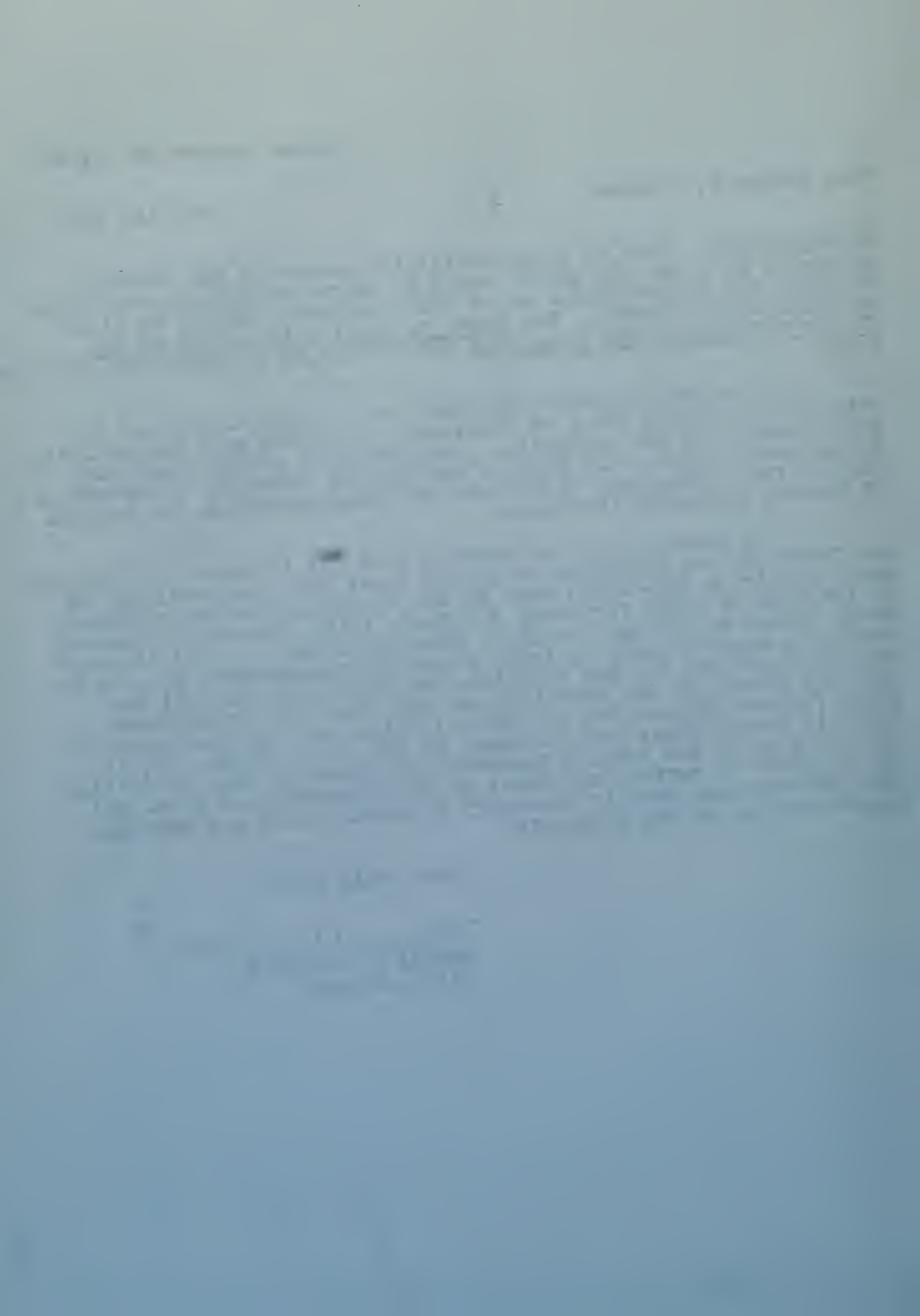
of applicants. This is a responsibility placed on the Housing Authority by state law and it would be up to the Housing Authority to make its determination as to what preference should be given to eligible applicants. See Banks v. Housing Authority of the City and County of San Francisco 120 Cal.App.2d 1, cert. den. 347 U.S. 974.

The Housing Authority would be the sole arbiter as to what rehabilitation would be necessary to provide safe and sanitary accommodation to the occupants. Section 34322 of the Health and Safety Code imposes this duty on the Housing Authority to determine what it feels necessary to provide safe accommodations for tenants of housing authority structures.

In summary, you are advised that (1) in order for the City and County of San Francisco to pledge funds from the hotel tax it would require a two-thirds vote of the electorate and an amendment to the code in order for Hotel Tax Funds to be diverted to support bonds issued by the San Francisco Housing Authority; (2) it would require a majority vote if lease financing arrangements were to be entered into with the San Francisco Housing Authority; (3) the City and County of San Francisco may use community development funds for the acquisition and rehabilitation of the International Hotel if proper steps are followed, as set forth above; (4) it is solely up to the Housing Authority to determine what priorities can be given to current residents of the International Hotel and also to determine what is necessary to provide safe and sanitary accommodations to the occupants.

Very truly yours,


THOMAS M. O'CONNOR
City Attorney



SF City Attorney

Letter Opinion No. 77-28

July 29, 1977

DOCUMENTS

OCT 7 1977

SAN FRANCISCO
PUBLIC LIBRARY

Honorable Mayor George R. Moscone
200 City Hall
San Francisco, California 94102

Subject: Consular Property Tax
Exemption

Dear Mayor Moscone:

This letter is in response to your inquiry concerning the taxable or tax exempt status of real property leased by the Government of Ireland for its consular offices.

The common law distinction made by the California Attorney General between owned property and leased property is fundamental and is recognized in Article 32 of the Vienna Convention, to which both the United States and Ireland are parties. Section 1 thereof provides that "Consular premises . . . of which the sending State . . . is the owner or lessee shall be exempt from all . . . taxes . . ."; but Section 2 thereof provides that "The exemption from taxation . . . shall not apply to such . . . taxes if, under the law of the receiving State, they are payable by the person who contracted with the sending State . . .".

Stated another way, Article 32 of the Vienna Convention provides that leased consular premises are exempt from tax unless such taxes, under local law, are payable by the owner-
lessor.

Hon. Mayor George R. Moscone 2

July 29, 1977

Under California law, real property taxes ordinarily are payable by the owner of such property (Ohrbach's, Inc., v. County of Los Angeles (1961) 190 Cal.App.2d 575; Rothman v. County of Los Angeles (1961) 193 Cal.App.2d 522), subject to certain exceptions not applicable here. Although the economic burden of real property taxes on leased premises traditionally is passed on to the lessee, California law does not require such a "pass on".

The subject assessment was made against the nonexempt owner-lessor of the subject premises, and the property taxes accordingly are payable by such owner-lessor. Therefore, under the long standing interpretation of the law in this field, the assessment clearly was proper and correct.

The request for my opinion suggests that recent decisions of the United States Supreme Court -- presumably Diamond National Corp. v. California State Board of Equalization (1976) 425 U.S. 278, Gurley v. Rohden (1975) 421 U.S. 200, and First Agricultural Bank v. Tax Com'n (1968) 392 U.S. 339 -- require an update and reappraisal of this legal question. Diamond National and Agricultural Bank, however, held only that national banks, as instrumentalities of the federal government, are exempt from state and local taxes on their purchases where applicable tax legislation requires that the sales tax be passed on to the purchaser-bank. Gurley, on the other hand, indicated that no exemption exists where the state or local statute did not require the tax to be passed on to the exempt consumer. The court said:

"The economic burden of taxes incident to the sale of merchandise is traditionally passed on to the purchasers of the merchandise. Therefore, the decision as to where the legal incidence of either tax falls is not determined by the fact that petitioner, by increasing his pump prices in the amounts of the taxes, shifted the economic burden of the taxes from himself to the purchaser-consumer. The Court has laid to rest doubts on that score raised by such

CONTENTS

Original Articles: 1. The Role of the General Practitioner in the Management of the Patient with a Heart Attack (J. H. Green, M.D., New York, N.Y.) 2. The Role of the General Practitioner in the Management of the Patient with a Heart Attack (J. H. Green, M.D., New York, N.Y.) 3. The Role of the General Practitioner in the Management of the Patient with a Heart Attack (J. H. Green, M.D., New York, N.Y.)

Continued from page 1: 4. The Role of the General Practitioner in the Management of the Patient with a Heart Attack (J. H. Green, M.D., New York, N.Y.) 5. The Role of the General Practitioner in the Management of the Patient with a Heart Attack (J. H. Green, M.D., New York, N.Y.) 6. The Role of the General Practitioner in the Management of the Patient with a Heart Attack (J. H. Green, M.D., New York, N.Y.)

Continued from page 1: 7. The Role of the General Practitioner in the Management of the Patient with a Heart Attack (J. H. Green, M.D., New York, N.Y.) 8. The Role of the General Practitioner in the Management of the Patient with a Heart Attack (J. H. Green, M.D., New York, N.Y.) 9. The Role of the General Practitioner in the Management of the Patient with a Heart Attack (J. H. Green, M.D., New York, N.Y.)

Continued from page 1: 10. The Role of the General Practitioner in the Management of the Patient with a Heart Attack (J. H. Green, M.D., New York, N.Y.) 11. The Role of the General Practitioner in the Management of the Patient with a Heart Attack (J. H. Green, M.D., New York, N.Y.) 12. The Role of the General Practitioner in the Management of the Patient with a Heart Attack (J. H. Green, M.D., New York, N.Y.)

Hon. Mayor George R. Moscone 3

July 29, 1977

decisions as Panhandle Oil Co. v. Mississippi ex rel. Knox, 277 U.S. 218 (1928); Indian Motorcycle Co. v. United States, 283 U.S. 570 (1931); and Kern-Limerick, Inc. v. Scurlock, 347 U.S. 110 (1954), at least under taxing schemes, as here, where neither statute required petitioner to pass the tax on to the purchaser-consumer."

Moreover, it is not clear that foreign governments enjoy the same scope of tax exemption as instrumentalities of the United States.

Since California property taxes fall upon the owner-lessor of leased premises, and since California law does not require that the lessor pass on these taxes to the lessee, it continues to be my opinion that where real property is only leased, and not owned, by a foreign government for consular purposes, the owner-lessor of the property is liable for real property taxes on the full value of the property.

Very truly yours,

THOMAS M. O'CONNOR
City Attorney

ORIGINAL ARTICLES

THE EFFECT OF VITAMIN C ON THE RATE OF GROWTH OF THE RAT
 H. S. GANDHI, M.D., and J. H. HARRIS, M.D.,
 Department of Pathology, University of Chicago, Chicago, Ill.

THE EFFECT OF VITAMIN C ON THE RATE OF GROWTH OF THE RAT
 H. S. GANDHI, M.D., and J. H. HARRIS, M.D.,
 Department of Pathology, University of Chicago, Chicago, Ill.

THE EFFECT OF VITAMIN C ON THE RATE OF GROWTH OF THE RAT
 H. S. GANDHI, M.D., and J. H. HARRIS, M.D.,
 Department of Pathology, University of Chicago, Chicago, Ill.

Continued on page 1000

Published by the American Medical Association
 535 North Dearborn Street, Chicago, Ill.

SF City Attorney

Letter Opinion No. 77-29

August 1, 1977

DOCUMENTS

OCT 7 1977

SAN FRANCISCO
PUBLIC LIBRARY

Honorable Quentin L. Kopp
President
Board of Supervisors
City and County of San Francisco
235 City Hall
San Francisco, CA 94102

Subject: Limitation Of Campaign Contributions
To Multiple Measure Committee

Dear Supervisor Kopp:

This is in response to your recent question in which you ask whether or not Section 16.508 of the San Francisco Municipal Election Campaign Contribution Control Ordinance prohibits contributions by a person to a committee formed to oppose two (2) ballot measures in excess of Five Hundred Dollars (\$500.00).

The pertinent portion of Section 16.508 reads as follows:

"Sec. 16.508 Campaign contributions-
limitations.

".

"(b)(1) No person shall make, and no campaign treasurer shall solicit or accept, any contribution which will cause the total

1. $\frac{1}{x^2} = x^{-2}$

2. $\frac{1}{x^3} = x^{-3}$

3. $\frac{1}{x^4} = x^{-4}$

4.

5. $\frac{1}{x^5} = x^{-5}$

6. $\frac{1}{x^6} = x^{-6}$

7. $\frac{1}{x^7} = x^{-7}$

8. $\frac{1}{x^8} = x^{-8}$

9. $\frac{1}{x^9} = x^{-9}$

10. $\frac{1}{x^{10}} = x^{-10}$

11. $\frac{1}{x^{11}} = x^{-11}$

12. $\frac{1}{x^{12}} = x^{-12}$

13. $\frac{1}{x^{13}} = x^{-13}$

14. $\frac{1}{x^{14}} = x^{-14}$

15. $\frac{1}{x^{15}} = x^{-15}$

16. $\frac{1}{x^{16}} = x^{-16}$

17. $\frac{1}{x^{17}} = x^{-17}$

18. $\frac{1}{x^{18}} = x^{-18}$

19. $\frac{1}{x^{19}} = x^{-19}$

20. $\frac{1}{x^{20}} = x^{-20}$

21. $\frac{1}{x^{21}} = x^{-21}$

22. $\frac{1}{x^{22}} = x^{-22}$

Honorable Quentin L. Kopp 2

August 1, 1977

amount contributed by such person with respect to a single election in support of or opposition to any measure requiring a simple majority vote for its adoption to exceed five hundred dollars (\$500)."

The section is clear that the limit is Five Hundred Dollars (\$500.00) when there is a committee formed to support or oppose a single ballot measure. The section is not clear when a single committee is formed to support or oppose multiple ballot measures.

Supervisor John L. Molinari asked the same question in October 1976. In reply to Supervisor Molinari I stated as follows:

"The Campaign Contribution Control Ordinance in Section 16.503(b) defines 'committee' as follows:

"(b) 'Committee' shall mean any person acting, or any combination of two or more persons acting jointly, in behalf of or in opposition to a candidate or to the qualification for the ballot or adoption of one or more measures." (Emphasis added)

"The most reasonable interpretation of this section would be that 'San Francisco For' would be a single committee when acting in behalf of the adoption of multiple propositions rather than being a separate committee for each proposition.

"Section 16.508(b) of the Ordinance limits the amount of campaign contributions by individual contributors and, although this section does not prohibit a contribution up to the maximum by an individual contributor for each proposition on the ballot, it does restrict a campaign treasurer from accepting a contribution in excess of the maximum amount

the first of these is the fact that the
the second is the fact that the
the third is the fact that the

the fourth is the fact that the
the fifth is the fact that the
the sixth is the fact that the

the seventh is the fact that the
the eighth is the fact that the
the ninth is the fact that the

the tenth is the fact that the
the eleventh is the fact that the
the twelfth is the fact that the

the thirteenth is the fact that the
the fourteenth is the fact that the
the fifteenth is the fact that the

the sixteenth is the fact that the
the seventeenth is the fact that the
the eighteenth is the fact that the

the nineteenth is the fact that the
the twentieth is the fact that the
the twenty-first is the fact that the

the twenty-second is the fact that the
the twenty-third is the fact that the
the twenty-fourth is the fact that the

Letter Opinion No. 77-29

Honorable Quentin L. Kopp 3

August 1, 1977

"You should be further advised that the interpretation I have given herein seems to me to be the most reasonable; however, the language is subject to a different interpretation. Since the District Attorney is the enforcement officer for the Ordinance, you may wish to seek his view of the matter."

As I stated in my letter to Supervisor Molinari, it is the intention of the Ordinance that the limit would be Five Hundred Dollars (\$500.00) to a committee supporting multiple measures. There is, however, sufficient uncertainty in the wording so as to cause confusion in some contributors that the limit is Five Hundred Dollars (\$500.00) for each measure of a multiple measure committee and the Ordinance is penal in nature. It is, therefore, my opinion that the Ordinance should be amended to specifically state that the Five Hundred Dollar (\$500.00) limit applies to committees formed to support multiple measures.

Very truly yours,

THOMAS M. O'CONNOR
City Attorney

SF City Attorney

August 3, 1977

DOCUMENTS

OCT 7 1977

SAN FRANCISCO
PUBLIC LIBRARY

Mr. R. Spencer Steele
Zoning Administrator
Department of City Planning
City and County of San Francisco
100 Larkin Street
San Francisco, CA 94102

Subject: Authority Of City Planning
Commission To Review Building
Permit Applications Within A
Redevelopment Project Area

Dear Mr. Steele:

This letter is in response to your request for an opinion as to the extent of the jurisdiction of the City Planning Commission with respect to review of a project within the boundaries of the approved Redevelopment Plan for Diamond Heights Redevelopment Project. The project in question is a forty-four (44) unit apartment structure located on Diamond Heights Boulevard north of Duncan Street. You further advise that the contemplated project is in conformity with the provisions of the City Planning Code and the approved Redevelopment Plan. For a proper consideration of this request for an opinion some background material must be outlined.

The original Redevelopment Plan for the Diamond Heights approved Redevelopment Project Area B-1 was approved and adopted by Ordinance No. 9369 (Series of 1939) whereby the area in question was to be placed in a R-1 classification for zoning purposes. Subsequent to that date, the Redevelopment Agency initiated a

1017

1017

1017



1017

1017

1017

1017

1017

1017

1017

1017

1017

1017

1017

1017

1017

1017

1017

1017

1017

1017

1017

1017

1017

1017

1017

1017

1017

1017

Mr. R. Spencer Steele

2

August 3, 1977

plan change by Resolution No. 43-63, adopted April 17, 1963, which recommended certain changes in the approved Redevelopment Plan for the Diamond Heights area, including a change of land use for the area from single family homes to multiple family dwellings.

The recommended plan change was transmitted to the Department of City Planning, which approved the recommended plan change and so advised the Board of Supervisors. At its meeting of January 20, 1964 the proposed amendment was adopted by the Board of Supervisors by Ordinance No. 10-64.

At the time that the original Redevelopment Plan was adopted, a cooperation agreement was entered into between the City and County of San Francisco and the Redevelopment Agency. The cooperation agreement was approved by Resolution No. 16083 (Series of 1939). The agreement was executed on November 16, 1955.

On July 2, 1976 an amendment for the disposition of land for private redevelopment was executed between the Redevelopment Agency of the City and County of San Francisco and the proposed developer, BRB Homes, Inc., a California corporation.

The Redevelopment Agency of San Francisco is a state agency functioning under state law to fulfill state purposes. (See Fellom v. Redevelopment Agency (1958) 157 Cal.App.2d 243; Andrews v. City of San Bernardino (1959) 175 Cal.App.2d 459.) After the adoption of a Redevelopment Plan by the Board of Supervisors and receipt of the plan by the Agency, the Agency is vested with responsibility for carrying out the plan (Section 33372, Health and Safety Code.) The Agency is charged with the acquisition of and sale of all property within the Redevelopment Survey or Project Areas (see Sections 33391, 33392, 33430, 33431 and 33432 of the Health and Safety Code.)

The applicable section of law, specifically Section 33220 of the Health and Safety Code, is quoted, in part, as follows:

Mr. R. Spencer Steele

3

August 3, 1977

"33220. Powers of public bodies. For the purpose of aiding and co-operating in the planning, undertaking, construction, or operation of redevelopment projects located within the area in which it is authorized to act, any public body, upon the terms and with or without consideration as it determines, may:

".

"(d) Plan or replan, zone or rezone any part of such area and make any legal exceptions from building regulations and ordinances.

"(e) Enter into agreements with the federal government, an agency, or any other public body respecting action to be taken pursuant to any of the powers granted by this part or any other law; such agreements may extend over any period, notwithstanding any law to the contrary."

Pursuant to the above quoted statute and former Section 33018 of the Health and Safety Code, the Board of Supervisors of the City and County of San Francisco and the Redevelopment Agency entered into a cooperation agreement as noted above. Subsection 7(e) provides as follows:

"The City further agrees that, subject to applicable law and the policies and procedures established under its Charter and existing codes and regulations, it will aid and cooperate in the undertaking of the project by:

".

"(e) Making the necessary changes in zoning use districts within the Project Area so as to conform to the land use provisions of the Redevelopment Plan."

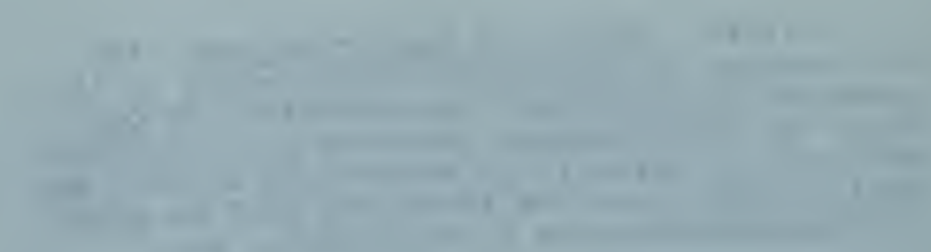


FIG. 1. Map of the North Atlantic region showing the location of the study area. The map includes latitude and longitude markings, and labels for various geographical features and regions.

The study area is located in the North Atlantic region, specifically in the area between 40°N and 60°N latitude and 10°W and 30°W longitude. The region is characterized by a complex pattern of ocean currents and weather systems, which are influenced by both local and remote factors. The study focuses on the analysis of these systems and their impact on the climate of the region.

The data used in this study were obtained from the National Centers for Environmental Prediction (NCEP) and the European Centre for Medium-Range Weather Forecasts (ECMWF). The data include reanalysis fields of temperature, pressure, wind, and moisture, as well as sea surface temperature (SST) and sea ice concentration (SIC) data. The data were processed and analyzed using a variety of statistical and dynamical techniques.

The results of the analysis show that the North Atlantic region is characterized by a strong seasonal cycle, with the warmest temperatures occurring in the summer months and the coldest temperatures occurring in the winter months. The region is also characterized by a high degree of variability, with significant interannual and interdecadal fluctuations in the climate. The study identifies several key factors that influence the climate of the region, including the North Atlantic Oscillation (NAO) and the Atlantic Multidecadal Oscillation (AMO).

The study concludes that the North Atlantic region is a complex and dynamic system, and that a better understanding of its climate is essential for predicting future climate change. The study provides a detailed analysis of the climate of the region, and identifies several key factors that influence the climate. The study also provides a framework for future research on the climate of the North Atlantic region.

Mr. R. Spencer Steele

4

August 3, 1977

Ordinance No. 9369 (Series of 1939), which adopted the approved Redevelopment Plan for Diamond Heights, provided in Section 9 thereto, in part, as follows:

"Section 9. Legislative and Administrative Cooperation. In order to implement and facilitate the effectuation of the Redevelopment Plan hereby approved it is found and determined that certain official action must be taken by the City and County of San Francisco with reference among other things to:

".

"5. Making the necessary changes in zoning use districts within the Project Area so as to conform to the land use provisions of this Redevelopment Plan.

".

"and accordingly the Board of Supervisors hereby:

".

"(b) directs the various officials, departments, boards and agencies of the City and County of San Francisco having administrative responsibilities in the premises likewise to cooperate to such end and to exercise their respective functions and powers in a manner consistent with said Redevelopment Plan;
."

The Courts of this State have reviewed cooperation agreements and the leading case on this subject is Housing Authority vs. City of Los Angeles, 38 Cal.2d 853, where the City Council of Los Angeles rescinded its approval of a low-rent housing project after the housing authority had proceeded in much the same fashion as the local Redevelopment Agency in the instant case. The Court, at page 868, supra, stated as follows:

The following is a list of the names of the authors of the papers in this issue, arranged in alphabetical order of their last names. The names are followed by the titles of their papers, and the page numbers on which they appear.

1. *John Doe*, *The Role of the Teacher in the Classroom*, 101
 2. *Jane Smith*, *The Impact of Technology on Education*, 102
 3. *Robert Brown*, *The Importance of Assessment in the Classroom*, 103
 4. *Emily White*, *The Role of the Parent in the Classroom*, 104
 5. *Michael Green*, *The Impact of the School Environment on Student Learning*, 105

The following is a list of the names of the authors of the papers in this issue, arranged in alphabetical order of their last names. The names are followed by the titles of their papers, and the page numbers on which they appear.

6. *David Black*, *The Role of the Teacher in the Classroom*, 106
 7. *Sarah Grey*, *The Impact of Technology on Education*, 107

The following is a list of the names of the authors of the papers in this issue, arranged in alphabetical order of their last names. The names are followed by the titles of their papers, and the page numbers on which they appear.

8. *Thomas Gold*, *The Importance of Assessment in the Classroom*, 108
 9. *Patricia Silver*, *The Role of the Parent in the Classroom*, 109
 10. *Christopher Rose*, *The Impact of the School Environment on Student Learning*, 110

The following is a list of the names of the authors of the papers in this issue, arranged in alphabetical order of their last names. The names are followed by the titles of their papers, and the page numbers on which they appear.

11. *Elizabeth King*, *The Role of the Teacher in the Classroom*, 111
 12. *William Hall*, *The Impact of Technology on Education*, 112
 13. *Olivia Young*, *The Importance of Assessment in the Classroom*, 113
 14. *Benjamin Clark*, *The Role of the Parent in the Classroom*, 114
 15. *Isabella Lewis*, *The Impact of the School Environment on Student Learning*, 115

Mr. R. Spencer Steele

5

August 3, 1977

"It is assumed that the rescission of prior action may appropriately be accomplished by a municipal legislative body where rights of third persons have not intervened. The application of this recognized principle is to matters of municipal concern. (McConoughey v. Jackson, 101 Cal. 265 [35 P. 863].) Here the state law is controlling in a matter of state concern. Thereby the city is authorized to contract in respect to the granted powers, but it is also bound to compliance therewith accordingly. (Kleiber v. City and County of San Francisco, *supra*, 18 Cal.2d 718, 724-725.) As also shown in the Dockweiler case (Housing Authority v. Dockweiler, *supra*, 14 Cal.2d at pp. 456-457), with citation of McNulty v. Owens, 188 S.C. 377 [199 S.E. 425] (See, also, Rutherford v. City of Great Falls, 107 Mont. 512 [86 P.2d 656, 661]), the cooperation agreement is not an unauthorized attempt by the city to bind itself as to the exercise of governmental functions. It is simply an authorized contract to cooperate in the performance of those functions and as such is valid. Thus control of city streets is a governmental function which the city without authority may not by contract prohibit or curtail. [Citations.] But as pointed out the city is authorized under the state law to cooperate by contract with the housing authority in the exercise of the granted power to close city streets, and in doing so is acting pursuant to the statute in a matter of state concern."

Further, at page 869, the court in the Housing Authority case, *supra*, stated as follows:

"In State ex rel. Great Falls Housing Authority v. City of Great Falls, 110 Mont. 318 [100 P.2d 915], mandate was sought directing the city to comply with its agreement to rezone areas and vacate or close streets. In issuing the writ the court said (100 P.2d at p. 921): 'The refusal of the city council . . . to comply with the requests of the Authority to vacate the streets and rezone the location was a useless act. The acts of the city

Mr. R. Spencer Steele

6

August 3, 1977

council of a contractual nature cannot be repudiated by any subsequent council, whether the membership of the council be the same or not. When the council authorized the creation of the Great Falls Authority it assumed all the obligations involved essential to a perfected project.' In declaring (at p. 922) that under the housing act both the city and the housing authority were state agents to achieve the state objectives, the court distinguished municipal and state powers and action, and was careful to admonish that the opinion should not be construed to impair the local self-government or home rule powers of the city. There is no inconsistency or disharmony in the city's functioning pursuant to its fundamental law in respect to municipal functions and powers, and pursuant to the state law as to specific powers granted in matters of state concern." (Citations.)

It appears from your letter that the City Planning Commission has been requested to review the proposed permit application and to exercise its discretion on the permit application pursuant to Section 26, Part III, of the San Francisco Municipal Code, which authorizes a permit issuing department to exercise its sound discretion as to whether said permit should be granted, transferred, denied or revoked. This section has been the subject matter of an opinion of this office and by various Court decisions, including Lindell Co. vs. Board of Permit Appeals, 23 Cal. 2d 303.

However, in this case the City Planning Commission has exercised its discretion when it approved the amendments to the Redevelopment Plan, adopted by Ordinance No. 10-64. Under the original plan, as adopted, they were directed by the Board of Supervisors to cooperate and to exercise its functions and powers in a manner consistent with the Redevelopment Plan. One of the provisions of the Redevelopment Plan is to sell land for private redevelopment and the Redevelopment Agency is charged with a duty under the Health and Safety Code to dispose of property in an approved Redevelopment Project area. It should also be pointed out that

Letter Opinion No. 77-30

Mr. R. Spencer Steele

7

August 3, 1977

there is a contract of sale from the Agency to the developer and third party rights have intervened. The City Planning Commission unilaterally does not have the authority to rescind the action taken by the previous Planning Commission, which found the proposed Redevelopment Plan to be in conformity with the Master Plan.

Under the facts and circumstances of this case it is my opinion that the Planning Commission does not have the authority to exercise discretionary review of the building permit applications presently pending in the Department of City Planning for approval of the construction of the forty-four (44) unit project.

Very truly yours,

THOMAS M. O'CONNOR
City Attorney

THE HISTORY OF THE

... ..

... ..

... ..

... ..

... ..

August 3, 1977

DOCUMENTS

OCT 7 1977

SAN FRANCISCO
PUBLIC LIBRARY

Honorable George R. Moscone
Mayor
City and County of San Francisco
200 City Hall
San Francisco, CA 94102

Subject: Reward For Witness
In Criminal Action

Dear Mayor Moscone:

This is in response to your letter of July 26, 1977 wherein you advise that the District Attorney and the Police Department has asked that you provide a reward for a witness whose cooperation with the Police Department, at great personal risk, led to the arrest and conviction of two extremely dangerous individuals engaged in the illegal trafficking of high explosives in the Bay Area. You have requested my opinion as to your authority to comply with this request.

The term "reward" has been defined as "a sum of money or other compensation offered to the public generally, or to a class of persons, for the performance of a designated service." (77 Corpus Juris Secundum, p. 365.)

As pointed out in prior opinions of this office, in the absence of express authorization, a municipal corporation, such as the City and County of San Francisco, has

THE

REPORT

OF THE

COMMISSION

OF THE

ROYAL ANTHROPOLOGICAL INSTITUTE

FOR THE YEAR 1900

AND THE PROCEEDINGS

OF THE

COMMISSION

OF THE

ROYAL ANTHROPOLOGICAL INSTITUTE

FOR THE YEAR 1900

AND THE PROCEEDINGS

OF THE

COMMISSION

OF THE

ROYAL ANTHROPOLOGICAL INSTITUTE

FOR THE YEAR 1900

AND THE PROCEEDINGS

OF THE

COMMISSION

Honorable George R. Moscone 2

August 3, 1977

not the power to offer rewards for violations of the criminal laws of the State. (Brite v. Board of Supervisors of Siskiyou County, 21 Cal.App.2d 233.) An exception has been made where the need for protection is peculiarly local or the reward is for the apprehension of one recognized as a menace to local rights. (Griffin v. City of Los Angeles, 134 Cal.App. 763.)

In the present instance I find neither express authorization nor a peculiarly local need. Additionally, and perhaps more to the point, it has been held that an act done prior to an offer of reward, such as appears to be the case herein, cannot constitute performance. (Union County v. Hopkins, 123 A. 365.)

Accordingly, in the light of the foregoing, it is my opinion that the offering of a reward in this case, particularly at this time, would not be within your power as Mayor of the City and County.

Very truly yours,

THOMAS M. O'CONNOR
City Attorney

| | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|-----|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 | 21 | 22 | 23 | 24 | 25 | 26 | 27 | 28 | 29 | 30 | 31 | 32 | 33 | 34 | 35 | 36 | 37 | 38 | 39 | 40 | 41 | 42 | 43 | 44 | 45 | 46 | 47 | 48 | 49 | 50 | 51 | 52 | 53 | 54 | 55 | 56 | 57 | 58 | 59 | 60 | 61 | 62 | 63 | 64 | 65 | 66 | 67 | 68 | 69 | 70 | 71 | 72 | 73 | 74 | 75 | 76 | 77 | 78 | 79 | 80 | 81 | 82 | 83 | 84 | 85 | 86 | 87 | 88 | 89 | 90 | 91 | 92 | 93 | 94 | 95 | 96 | 97 | 98 | 99 | 100 |
|---|---|---|---|---|---|---|---|---|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|-----|

101

102

103

104

105

106

107

108

109

110

111

112

August 4, 1977

DOCUMENTS

OCT 7 1977

SAN FRANCISCO
PUBLIC LIBRARY

Honorable Robert H. Mendelsohn
Board of Supervisors
235 City Hall
San Francisco, CA 94102

Subject: Legality of City-Wide Permits for
Residential Preferential Parking

Dear Supervisor Mendelsohn:

Last year the Board of Supervisors passed and the Mayor signed Ordinance No. 312-76 which added Article 15 to Part II, Chapter XI of the San Francisco Municipal Code (Traffic Code), thereby providing for the establishment of residential preferential parking areas within the city and county. The ordinance authorized the issuance of permits to residents of a preferential parking area, thereby exempting them from certain parking restrictions. Residents of other areas of San Francisco as well as persons residing outside the city and county are subject to such parking restrictions for the area as are adopted by the Board of Supervisors.

You have inquired whether in my opinion it would be appropriate to issue residential parking permits on a city-wide basis, as a consequence subjecting only non-San Francisco residents to the preferential parking area parking restrictions. It is my opinion that such a procedure would substantially undermine the legislative basis upon which the ordinance is founded.

Robert H. Mendelsohn

2

August 4, 1977

As I expressed in Opinion Letter No. 76-23, one of the primary bases supporting the enactment of a preferential parking system is concern for preservation of neighborhood living within a major urban center such as San Francisco. Congested parking as well as attendant traffic, noise and air pollution problems constitutes one of the chief disincentives for persons desiring to remain within or to return to the city. Creation of parking time restrictions from which residents of the area are exempted is calculated to relieve this particular burden on city living.

As you observe in your letter, neighborhoods often suffer from parking and traffic overloads generated by both intra and inter-city commuters. In such a case, to permit residents of any neighborhood of the city to secure a permit for a particular preferential parking area would conflict with the policy supporting enactment of the preferential parking ordinance. Such a "relaxation" of the ordinance procedures could conceivably strengthen any challenge to the ordinance brought on constitutional grounds.

Therefore, you are advised that authorizing the issuance of permits for preferential parking areas on a city-wide basis could erode the legal basis upon which Ordinance No. 312-76 was founded.

Very truly yours,

THOMAS M. O'CONNOR
City Attorney

SF City Attorney

August 8, 1977

DOCUMENTS

OCT 7 1977

SAN FRANCISCO
PUBLIC LIBRARY

Mr. Gilbert H. Boreman
Clerk of the Board
Board of Supervisors
City and County of San Francisco
235 City Hall
San Francisco, CA 94102

Subject: Your File No. 105-77
Charter Section 8.405; Use Of
Salary Data Established Subse-
quent to August 1st Thereunder

Dear Mr. Boreman:

This is in response to your letter of August 3, 1977 wherein you advise that, pursuant to the provisions of Section 8.405 of the Charter, the Civil Service Commission has certified to the Board of Supervisors the rates of compensation paid to police officers and firemen in the cities of 350,000 population or over in the State of California. (Long Beach, Los Angeles, Oakland, San Diego and San Jose.) At the meeting of the Legislative and Personnel Committee of August 2, 1977 a representative of the Civil Service Commission advised the Committee that the cities of Los Angeles and San Jose are presently involved in negotiations which could result in higher rates of compensation than shown in the certification for either or both of these cities. In this regard, the Committee has requested an opinion as to whether the Board may consider additional data on these two cities should such data become available within the time set forth in the Charter for fixing and payment of rate of compensation for the current fiscal year for members of the uniformed forces of the Police and Fire Departments.

Mr. Gilbert H. Boreman

2

August 8, 1977

Section 8.405 of the Charter provides, in general, that the Civil Service Commission shall, not later than the 1st day of August of each year, survey and certify to the Board of Supervisors the rates of compensation paid police officers and firemen in the cities of 350,000 population or over in the State of California. Thereupon, the Board of Supervisors, by ordinance, shall fix the rates of compensation for the members of the uniformed forces of the San Francisco Police and Fire Departments at rates which are equal to the "average maximum wage" paid to their counterparts in the cities of 350,000 population or over in the State of California. The Board is authorized to do this as late as August 25th (Butler v. City and County of San Francisco (1951) 104 Cal.App.2d 126, 134) and said rates of compensation are retroactive to July 1st.

The fixing of salaries of municipal employees is a legislative act and involves an exercise of the independent judgment of the legislative body. (City and County of San Francisco v. Boyd (1943) 22 Cal.2d 685, 692.) Although the Charter requires that the Civil Service Commission survey and certify wage data to the Board of Supervisors, it does not purport to bind the Supervisors to ratify the data submitted by the Commission by enacting it into ordinance. (San Francisco Chamber of Commerce v. City and County of San Francisco (1969) 275 Cal.App.2d 499, 502; Collins v. City and County of San Francisco (1952) 112 Cal.App.2d 719, 731; City and County of San Francisco v. Boyd, supra.) Under provisions such as those contained in Section 8.405 of the Charter, the Board of Supervisors has a mandatory duty to make a finding as to the "average maximum wage" referred to in said section. (Alameda County Employees Assn. v. County of Alameda (1973) 30 Cal.App.3d 518, 531.) This determination may be made either prior to or at the time the ordinance is adopted by the Board. (Sanders v. City of Los Angeles (1970) 3 Cal.3d 252, 262; Walker v. County of Los Angeles (1961) 55 Cal.2d 626, 635; Alameda County Employees Assn. v. County of Alameda, supra.)

In Goodrich v. City of Fresno (1946) 74 Cal.App.2d 31, where a city charter provision embracing the "prevailing wage" doctrine was considered, it was said at page 36: "It may be conceded . . . that section 85 of the Fresno charter is clear, definite and enforceable, that a prevailing wage statute should be liberally

Mr. Gilbert H. Boreman

3

August 8, 1977

construed in favor of the worker, and that the city officials have no discretion or right to pay these employees less than the prevailing wage referred to in the charter provision." In similar vein, it would appear that in considering an "average maximum wage" statute, city officials would have no discretion or right to pay employees less than the "average maximum wage" referred to in said statute, which could occur in this instance if the present negotiations in either the City of Los Angeles or the City of San Jose, or both, are timely concluded and result in higher wage than that included in the Civil Service Commission certification of August 1st.

Accordingly, it is my opinion that the Board of Supervisors may consider additional data as to the wages paid to police officers and firemen in the cities of Los Angeles and San Jose, or both, should such data become available within the time set forth in the Charter for fixing and payment of rates of compensation for the current fiscal year for the uniformed members of the Police and Fire Departments.

Very truly yours,

THOMAS M. O'CONNOR
City Attorney

SF City Attorney

August 17, 1977

DOCUMENTS

OCT 7 1977

SAN FRANCISCO
PUBLIC LIBRARY

Supervisor John L. Molinari
Board of Supervisors
235 City Hall
San Francisco, CA 94102

Subject: Interpretation of Overtime as Applied
to Employee Working a 35-Hour Week

Dear Supervisor Molinari:

This is in response to your request for my opinion interpreting Section V.A. of the 1976-77 Salary Standardization Ordinance.

The 1975-76 Salary Standardization Ordinance provided, in Section 8.1.2, for the payment of overtime for work performed on a "non-work day," regardless of the number of hours worked during a normal work week. The Board of Supervisors amended the overtime provision contained in the 1976-77 Salary Standardization Ordinance to read as follows:

Section V. Overtime - Compensation.

"A. Appointing officers may require employees to work longer than eight (8) hours per day or longer than the normal work week. Any time worked under proper authorization of the appointing officer of his designated representative or any hours suffered to be worked by an employee, exclusive of part-time employees, in excess of the regular or normal work day or week shall be designated as overtime and shall be compensated at one-and-one-half times the base hourly

ORIGINAL ARTICLES

CLINICAL

STUDY



The following table shows the results of the study. The data is presented in a tabular format with columns for various parameters and rows for different groups or conditions. The text is too blurry to transcribe the specific values.

The results of the study are discussed in the following text. The authors conclude that the findings are significant and have implications for clinical practice. Further research is needed to confirm these results.

John L. Molinari

2

August 17, 1977

rate which may include the 6-1/4% night differential if applicable.

"Employees working in classifications that are designated in Section II of this ordinance as having a normal work day of less than eight (8) hours or a normal work week of less than forty (40) hours shall not be entitled to overtime compensation for work performed in excess of said specified hours until it exceeds eight (8) hours per day or forty (40) hours per week. Overtime compensation so earned shall be computed as set forth in the provisions of this section and be subjected to all conditions as set forth in this section.

"The Civil Service Commission shall determine whether work in excess of eight (8) hours a day performed within a sixteen (16) hour period following the end of the last preceding work period shall constitute overtime or shall be deemed to be work scheduled on the next work day."

The first paragraph of Section V.A. sets forth the general rule for the payment of overtime. An employee, whose employment class is entitled to payments for overtime service, will be paid for hours worked . . . in excess of the regular or normal work day or week. . . "

However, the second paragraph limits the application of the general overtime provision to employee classifications with a normal work day of less than eight hours or a normal work week of less than 40 hours. For instance, a Class 7345 Electrician is employed for a normal work week of 35 hours. The 1976-77 ordinance provided for the payment of overtime to an electrician who worked in excess of forty hours a week. Section V.A. does not permit payments to be made until an employee has worked more than 40 hours a week regardless of the employee's normal work week.



John L. Molinari

3

August 17, 1977

The second paragraph of Section V.A. clearly states that overtime can only be paid for work performed in excess of eight (8) hours per day or forty (40) hours per week. No reference is made to a "normal work week." The forty hours of work must be done within a week, which is a seven day period, before an employee designated in Section II can qualify for overtime. This interpretation is supported by the action of the Board of Supervisors deleting from the 1975-77 Salary Standardization Ordinance the provision contained in the 1975-76 ordinance for overtime payments for work performed on a day outside of the employee's normal work week, regardless of the hours previously worked.

In my opinion, hours of work performed by employees designated in Section II of the 1975-76 Salary Standardization Ordinance in excess of their normal work week can only be compensated as overtime if the hours are in excess of forty hours worked during the preceding work week.

Very truly yours,

THOMAS M. O'CONNOR
City Attorney



SF City Attorney

August 19, 1977

DOCUMENTS

OCT 7 1977

SAN FRANCISCO
PUBLIC LIBRARY

Mr. Gilbert H. Boreman
Clerk of the Board
Board of Supervisors
235 City Hall
San Francisco, California 94102

Subject: Business Tax Exemption for Small Business
Enterprises

Dear Mr. Boreman:

This is in response to your August 17, 1977, request for opinion in connection with several aspects of legislation to be considered for final passage by the Board at its meeting of August 22, 1977.

The proposed legislation establishes exemptions under the Payroll Expense Tax Ordinance and the Business (Gross Receipts) Tax Ordinance for "small business enterprises", i.e., for taxpayers whose tax liability, but for the exemption, would not exceed \$500.00.

Your request for my opinion raises two questions:

- (1) Whether an exemption for taxpayers whose tax liability otherwise would not exceed \$500.00 is prohibited by the Equal Protection Clauses of the United States or California Constitutions; and
- (2) Assuming that a trial court would find such exemption to be invalid, whether there is any substantial likelihood that the relief ordered by the court would not involve merely invalidating the exemption, but would instead consist of declaring

Mr. Gilbert H. Boreman

2

August 19, 1977

the tax ordinances void in their entirety and restraining collection of all taxes under the ordinances.

On the first point -- validity of the small business exemption -- it is my opinion that the proposed legislation, if enacted, will be held valid and proper.

The proposed legislation does not involve any "suspect classification", such as race, sex or religion, nor can it be construed as infringing upon any "fundamental interest", such as the right to vote or the right to travel. Therefore, the classification between exempt small business enterprises, and taxable businesses generally, will be upheld if it rests upon any rational basis whatsoever, and it will be presumed to rest upon a rational basis if there is any conceivable state of facts which would support it. Allied Stores v. Bowers (1959) 358 U.S. 522; City of San Jose v. Donohue (1975) 51 Cal.App.3d 40; Clark v. City of San Pablo (1969) 270 Cal.App.2d 121; Helton v. City of Long Beach (1976) 55 Cal.App.3d 840.

Inequalities in business taxes based on the size or volume of a business or business transaction have long been upheld. In re Bruce (1921) 54 Cal.App. 280; In re Fuller (1940) 15 Cal.2d 425; Fox, etc. v. City of Bakersfield (1950) 36 Cal.2d 136.

In my opinion, the exemption and separate classification for "small business enterprises" would be upheld by the courts on any of the following rational bases, among others, all of which, in the present case, appear to have been actually considered by the Board of Supervisors.

1. The legislation clearly is designed to encourage the location within San Francisco of needed and useful small business enterprises which will provide jobs and will otherwise contribute to the economy of San Francisco, and also to retain within San Francisco small business enterprises which, because of the financial and paper work burdens of the San Francisco business taxes, otherwise would depart San Francisco with the loss of jobs to San Franciscans and other detriments to the economy of San Francisco. The presentation to the Board by the author of the small business exemption was to the effect that many small businesses have left

THE JOURNAL OF THE ROYAL ANTHROPOLOGICAL INSTITUTE

The Journal of the Royal Anthropological Institute is a quarterly publication which contains original research papers, reviews, and news items. It is the principal journal of the Royal Anthropological Institute, which was founded in 1871. The Institute's main concern is with the study of man in all his aspects, and the Journal provides a forum for the presentation of new ideas and findings in this field.

The Journal is published by the Royal Anthropological Institute, which is a charitable organization registered in England. The Institute's headquarters are at 21, Bedford Square, London, W.C.1. The Journal is published four times a year, in January, April, July, and October. The subscription price of the Journal for 1970 is £12.00 per volume (four parts) for institutions and £6.00 for individuals. Single parts are available for purchase at £3.00. The Journal is also available in microfilm and microfiche editions.

For more information about the Journal or the Institute, please write to the Secretary, Royal Anthropological Institute, 21, Bedford Square, London, W.C.1. The Institute's telephone number is 01-637 5111.

The Journal of the Royal Anthropological Institute is a quarterly publication which contains original research papers, reviews, and news items. It is the principal journal of the Royal Anthropological Institute, which was founded in 1871. The Institute's main concern is with the study of man in all his aspects, and the Journal provides a forum for the presentation of new ideas and findings in this field.

The Journal is published by the Royal Anthropological Institute, which is a charitable organization registered in England. The Institute's headquarters are at 21, Bedford Square, London, W.C.1. The Journal is published four times a year, in January, April, July, and October. The subscription price of the Journal for 1970 is £12.00 per volume (four parts) for institutions and £6.00 for individuals. Single parts are available for purchase at £3.00. The Journal is also available in microfilm and microfiche editions.

For more information about the Journal or the Institute, please write to the Secretary, Royal Anthropological Institute, 21, Bedford Square, London, W.C.1. The Institute's telephone number is 01-637 5111.

The Journal of the Royal Anthropological Institute is a quarterly publication which contains original research papers, reviews, and news items. It is the principal journal of the Royal Anthropological Institute, which was founded in 1871. The Institute's main concern is with the study of man in all his aspects, and the Journal provides a forum for the presentation of new ideas and findings in this field.

Mr. Gilbert H. Boreman

3

August 19, 1977

San Francisco in the last three years, that the financial and paper work burdens of our local business taxes were a significant factor in such business departures, and that this problem did not seem to exist with larger businesses. The courts consistently have recognized that tax exemptions designed to attract new businesses, or to retain existing businesses, rest upon a rational basis and are not violative of equal protection. Allied Stores v. Bowers, supra.

2. The proposed legislation clearly is designed to eliminate the administrative inconvenience and the collection costs involved in collecting business taxes from small businesses which, in some cases, pay taxes in amounts so small that collection costs exceed revenues collected, and, in other cases, pay such small amounts of tax that the revenues collected only marginally exceed the collection costs. The report of the Budget Analyst concludes that 53.9% of the Tax Collector's overhead is expended in connection with these "small business enterprises", which generate only 8% of the revenues. The proposed exemption would thereby streamline the complementary taxes and make them far more efficient. The courts consistently have recognized that tax inequalities designed to foster administrative convenience rest upon a rational basis and are not violative of equal protection. City of San Jose v. Donohue, supra; Clark v. City of San Pablo, supra.

3. The proposed tax exemption for small business enterprises also is consistent with the reasoning, long recognized in tax cases, that ability to pay is a proper consideration in determining the propriety of tax inequalities. It seems logical to conclude that, as a general rule, larger businesses are more able to pay the San Francisco business taxes than are smaller businesses, subject, of course, to many exceptions. The proposed classification therefore is not irrational or arbitrary.

On the second point -- the likelihood that a court might restrain collection of all business taxes -- it is my opinion that even if a court were to conclude that the proposed exemption violates equal protection, the appropriate relief would be an order directing the Tax Collector to disregard the exemption and mandating him to collect the tax from all taxpayers, including small business enterprises and other taxpayers alike.



Mr. Gilbert H. Boreman

4

August 19, 1977

The proposed legislation contains an express severability clause declaring a legislative intention that if for any reason the tax exemption for small businesses is held to be invalid, the tax ordinances shall continue in full force and effect as if the exemption had never been enacted and that said taxes shall apply to small business enterprises as well as to other taxable businesses. The courts customarily recognize and enforce such severability clauses. Klassen v. Burton (1952) 110 Cal.App.2d 539.

It is accordingly my opinion that the proposed ordinance exempting small business enterprises from payroll expense and business taxes is valid and proper; and even if a court were to find the exemption invalid, the appropriate relief would not be an injunction restraining collection of all such taxes, but rather would be an order directing the Tax Collector to disregard the exemption provision and to collect the taxes from small business enterprises as well as other taxable businesses.

Very truly yours,

THOMAS M. O'CONNOR
City Attorney

1877

1878

1879

1880

1881

1882

1883

1884

SF
City Attorney

Letter Opinion No. 77-36

August 22, 1977

DOCUMENTS

OCT 7 1977

SAN FRANCISCO
PUBLIC LIBRARY

Mr. Thomas P. Brady, Chairman
Assessment Appeals Board
Room 2-B, City Hall
San Francisco, CA 94102

Subject: Availability of the Assessment Appeals Board
Files: Official and Personal

Dear Mr. Brady:

This is in response to your letter inquiring whether either the general public or a party in an equalization proceeding may properly have access to the files and records of the Assessment Appeals Board.

Assessment Appeals Board records are subject to the provisions of the California Public Records Act (Gov. Code, Sec. 6250, et seq.). Government Code Section 6253(a) provides:

"Public records are open to inspection at all times during the office hours of the state or local agency and every citizen has a right to inspect any public record, except as hereafter provided. . . ."

As you noted in your request, Revenue and Taxation Code Section 1605.4 and California Administrative Code, Title 18, Section 313(h) (State of Equalization Rule 313(h)) provide an exception to the general

1. Introduction

2. Theory

3. Results

4. Discussion

5. Conclusion

6. References

7. Appendix

8. Acknowledgments

9. Notes

10. Figures

11. Tables

12. Glossary

13. Index

14. Bibliography

15. Appendix

16. Acknowledgments

17. Notes

18. Figures

19. Tables

20. Glossary

21. Index

22. Bibliography

23. Appendix

Mr. Thomas P. Brady

2

August 22, 1977

rule above, where business trade secrets are concerned. Section 1605.4 illustrates this exception:

"Equalization hearings shall be open and public except that, upon conclusion of the taking of evidence, the county board may deliberate in private in reaching a decision. An applicant may request the board to close to the public a portion of the hearing by filing a declaration under penalty of perjury that evidence is to be presented which relates to trade secrets the disclosure of which will be detrimental to the business interests of the owner of the trade secrets. If the board grants the request, only evidence relating to trade secrets may be presented during the time the hearing is closed."

Government Code Section 6254(a) provides a further exception to the general rule and is applicable to the second part of your inquiry concerning the availability of the personal files of the members of the Assessment Appeals Board. Section 6254(a) exempts particular records from public inspection:

"Preliminary drafts, notes, or interagency or intra-agency memoranda which are not retained by public agency in the ordinary course of business, provided that the public interest in withholding such records clearly outweighs the public interest in disclosure."

In view of the foregoing, it is my opinion that the official files and records of the Assessment Appeals Board are public records within the meaning of the California Public Records Act and, consequently, are accessible to the public. However, records which contain business trade secrets and records prepared by the respective members of the Board for their personal use are not subject to public scrutiny.

You are accordingly advised.

Very truly yours,

THOMAS M. O'CONNOR
City Attorney

the first of these is the fact that the

the second is the fact that the

the third is the fact that the

the fourth is the fact that the

the fifth is the fact that the

the sixth is the fact that the

the seventh is the fact that the

the eighth is the fact that the

the ninth is the fact that the

the tenth is the fact that the

7
SF City Attorney

Letter Opinion No. 77-37

7-37

August 31, 1977

RECORDED

PUBLIC LAW

Honorable Jerrold E. Levitin
Commissioner, Municipal Court
Hall of Justice, Department 20
850 Bryant Street
San Francisco, CA 94103

Subject: Residential Preferential Parking Ordinance

Dear Commissioner Levitin:

You have requested my opinion with respect to the constitutionality of the San Francisco Residential Permit Parking Ordinance in light of an opinion of the Supreme Court of Virginia invalidating a permit parking plan and an opinion of the Supreme Judicial Court of Massachusetts upholding such a regulatory scheme. Previously in Letter Opinion No. 76-23 I concluded that a proposed residential permit parking plan for certain San Francisco neighborhoods was not unconstitutional. Neither the form of the ordinance enacted subsequent to my opinion nor the two decisions referenced above compel a contrary conclusion.

In Letter Opinion No. 76-23, a number of proposed rational bases for preferential parking were discussed, including reduction of traffic congestion, promoting the use of mass transit and making major urban area living more attractive. The Board of Supervisors in enacting the Residential Permit Parking Program (Art. 15, Part II, Chapter XI of the San Francisco Municipal Code) made express legislative findings in Section 302 thereof that residential preferential parking would help to arrest the flight of the middle class to the suburbs, reduce traffic congestion as well as noise and air pollution, and conserve energy by cutting down on vehicle miles traveled. Similar findings were commented on favorably by



Jerrold E. Levitin

2

August 31, 1977

the Massachusetts court in Commonwealth v. Petralia, 362 N.E.2d 513, 517 (1977):

"We think that a regulation which discourages persons from driving their automobiles to the congested neighborhood in the vicinity of the court house and other public facilities in East Cambridge deals rationally with the public interest in reducing highway congestion, in reducing air pollution, and in encouraging the use of public transportation in place of private transportation."

It is significant to note that the Supreme Court of Virginia concluded that the Arlington County ordinance was also rationally based and an appropriate exercise of the legislative power. County Board of Arlington County v. Richards, 231 S.E.2d 231, 234 (1977). Therefore, the reasons articulated by the Board of Supervisors for enactment of a residential preferential parking ordinance clearly satisfy the constitutional requirement that such legislation be within the police power and rationally related to the purposes for which it was adopted.

As to the question of the power of a local municipality to regulate in the area of preferential parking, it has been resolved in the city's favor by an amendment to Vehicle Code Section 22507 expressly granting such authority to local agencies.

This leaves the question as to whether treating "resident" motor vehicles differently than "commuter" vehicles (i.e. vehicles not registered within the preferential zone) is an arbitrary or capricious classification. The United States Supreme Court recently commented on the appropriate standard of judicial review in cases such as this. In City of New Orleans v. Dukes, 427 U.S. 297, 49 L.Ed.2d 511 (1976), the city prohibited the vending of wares in the French Quarter unless a particular vendor had been operating within that area for at least eight years prior to the enactment of the regulation. The classification of the ordinance was challenged on equal protection grounds. The Court observed:



Jerrold E. Levitin

3

August 31, 1977

"In short, the judiciary may not sit as a superlegislature to judge the wisdom or desirability of legislative policy determinations made in areas that neither affect fundamental rights nor proceed along suspect lines . . . in the local economic sphere, it is only the invidious discrimination, the wholly arbitrary act, which cannot stand consistently with the Fourteenth Amendment."

The Court went on to uphold as rationally based the "grandfather" clause of the New Orleans peddling ordinance. Moreover, the Court also overruled its only economic regulation decision in this century that invalidated a legislative enactment on equal protection grounds. Morey v. Doud, 354 U.S. 457 (1957).

The Court in Commonwealth v. Petralia, supra, properly characterized the Massachusetts ordinance as one involving vehicle use. A person's place of residence is only an administratively appropriate means of measuring such use. That is, reduction of vehicle miles as a goal is rationally served by a system that eliminates convenience commuter parking. Residents of an area do not drive as many vehicle miles when they can park near their homes, whereas non-resident travel involves unnecessary driving when alternative transportation modes are available.

The Supreme Court of Virginia thus improperly characterized residential preferential parking as discriminating between residents and non-residents. But even if the court in Arlington County did accurately describe the ordinance classification, it unreasonably interfered with the legislative discretion under the principles set forth in City of New Orleans v. Dukes, supra. The court could not as a matter of law conclude that there existed no rational connection between a "residential" classification and the admittedly valid purposes the permit parking system was calculated to serve.

In addition to these facts, the decision in the Arlington County case is inapposite to the unique parking circumstances in San Francisco. In Arlington County the court noted that within



Jerrold E. Levitin

4

August 31, 1977

the permit zone almost all the residences had available off-street parking. Under the San Francisco ordinance, one of the factors to be considered when a particular area is surveyed for qualification as a permit zone is whether there exists off-street parking sufficient to accommodate area residents. If there is, then the area would not qualify for preferential treatment.

Secondly, Arlington County is essentially a rural "bedroom" county adjacent to Washington, D.C. It does not contain the multitude of dwelling units with no off-street parking as is characteristic of certain neighborhoods in San Francisco. Nor are the dwellings in Arlington County concentrated as densely as in San Francisco. The mass transit facilities available in San Francisco of course are more comparable to Boston than to Arlington County, Virginia.

Thirdly, the Arlington County ordinance spoke solely to the interests of the particular preferential parking zone. The San Francisco ordinance is expressly intended to serve the interests of the city and county as a whole by means of parking restrictions in certain neighborhoods. Also the San Francisco ordinance regulates residents of the city who do not live within the particular preferential parking zone. Thus the ordinance is more narrowly tailored than the Massachusetts ordinance and not subject to attack as an "anti-commuter" piece of legislation. It is calculated to reduce vehicle miles and attendant noise and air pollution while promoting the use of mass transit both within and without the city and county.

Based upon the above analysis, I conclude that the San Francisco Residential Permit Parking Program is an appropriate exercise of the municipal police power. It does not regulate or classify in an unconstitutional manner under either the Equal Protection or Due Process Clauses of the Fourteenth Amendment.

Very truly yours,

THOMAS M. O'CONNOR
City Attorney



September 2, 1977

Hon. John L. Molinari
Board of Supervisors
235 City Hall
San Francisco, CA 94102

Re: Political Contribution Limit; Loans Defined as Contributions
under City Campaign Ordinance

Dear Supervisor Molinari:

This is in response to your request for my opinion whether the amount of a loan made to a candidate for an elected city and county position is limited by the San Francisco Municipal Election Campaign Contribution Control Ordinance.

San Francisco Administrative Code Section 16.508(a) places a five hundred dollar limitation upon contributions which a person can make for the campaign of a candidate for municipal elective office:

"(a) No person other than a candidate shall make, and no campaign treasurer shall solicit or accept, any contribution which will cause the total amount contributed by such person with respect to a single election in support of or opposition to such candidate, including contributions to political committees supporting or opposing such candidate, to exceed five hundred dollars (\$500)."

The Ordinance does not define "contribution". However, Sec. 16.504 adopts and makes applicable the State Fair Political Practices Act:



Hon. John L. Molinari

2

September 2, 1977

"Except as otherwise provided in this article, the provisions of Title 9 of the Government Code of the State of California (commencing at Sec. 81000)"

Section 82015 of the Government Code defines "contribution" to mean ". . . a payment, a forgiveness of a loan, a payment of a loan by a third party, or an enforceable promise to make a payment except to the extent that full and adequate consideration is received unless it is clear from the surrounding circumstances that it is not made for political purposes."

A "payment" is defined in Government Code Sec. 82044 as a loan. Because San Francisco's Campaign Contribution Control Ordinance does not define "contribution" and incorporates provisions of the State Fair Political Practices Act, we must look to the interpretations of the state campaign law to determine if a "loan" is a contribution and therefore limited by the \$500 contribution limitation.

The legal division of the Fair Political Practices Commission (FPPC) has defined a loan not to be a contribution if the loan is supported by full and adequate consideration. For instance, a loan from a lending institution which is secured by a pledge of real property would not be reportable as a contribution. A personal loan which is subject to the payment of an interest rate at least equal to that charged by a lending institution and backed by financially sound security would not be a contribution unless forgiven or repaid by a third party. The FPPC considers these loans to be supported by full and adequate consideration and thus not contributions.

In my opinion, a loan which is secured and which subjects the debtor to at least the prevailing interest rate is not a contribution for purposes of the Fair Political Practices Act. Therefore, a candidate for election to a city and county office can accept a loan in excess of five hundred dollars, but only if such loan is supported by full and adequate consideration. However, forgiveness of any portion of the principal or interest due or any payment by a third party would convert the amount forgiven or paid into a contribution, and would be subject to the five hundred dollar contribution limitation.

Very truly yours,

THOMAS M. O'CONNOR
City Attorney



September 14, 1977

Mr. John J. Walsh
General Manager, Personnel
Civil Service Commission
151 City Hall
San Francisco, California 94102

Subject: Supervisorial Salary Adjustments under Section IV H,
Salary Standardization Ordinances 1975-76; 1976-77

Dear Mr. Walsh:

This is in reply to your request for opinion on various questions concerning the application of Section IV H of the Salary Standardization Ordinance for 1975-76 and 1976-77.

Situation No. 1

You indicate that various employees filed a request for supervisorial salary adjustment under the provisions of Section IV H of the 1975-76 Salary Standardization Ordinance; and that the Civil Service Commission denied them any adjustment under that ordinance. Subsequently, Section IV H of the Salary Standardization Ordinance was amended for 1976-77. Certain employees who were in the exact situation as those employees who filed for a supervisorial adjustment in 1975-76 requested and obtained a salary adjustment under the 1976-77 Salary Standardization Ordinance.

You ask the following question:

"Can the Civil Service Commission now rescind its action of denial of 1975-76 and approve the 1975-76 request retroactive to July 1, 1975."



Mr. John J. Walsh

2

September 14, 1977

It is a general rule that in the absence of an express grant of power, an administrative board or agency has no inherent or implied power to reopen or reconsider a final decision (Heap v. City of Los Angeles, 6 Cal.2d 405; Olive Proration, etc. Com. v. Agricultural, etc. Com., 17 Cal.2d 204; Smith v. City and County of San Francisco, 11 Cal.App.3d 606; Chas L. Harney, Inc. v. State of California, 217 Cal.App.2d 77, 97; Hoertkorn v. Sullivan, 67 Cal.App.2d 151; City Atty. Opinion No. 68-66, dated August 27, 1968).

Section IV H(7) of the Salary Standardization Ordinance of 1975-76 provides that the decision of the Civil Service Commission as to whether the compensation schedule of a supervisory employee shall be adjusted in accordance with those provisions "shall be final". An action of the Civil Service Commission may be reconsidered where the request shows that there is new information not previously considered by the Commission (Section 5.07, Civil Service Rules). Such a request must be made within thirty (30) calendar days after notification of the Commission's action. It is my opinion that the action of the Civil Service Commission in the hearing requests for supervisorial salary adjustments under Section IV H of the 1975-76 Salary Standardization Ordinance is final by the terms of Section IV H(7) and cannot be reconsidered at this time unless the affected employee has timely requested reconsideration under Section 5.07 of the Civil Service Rules.

Situation No. 2

This issue involves a supervisor who is paid on salary schedule 44.9 and a subordinate employee who is paid on schedule 45.5 which is 3% higher than the supervisory employee. However, the subordinate employee's normal work week is 35 hours while the supervisory employee works 40 hours per week. Because of the differences in their normal work week, the supervisor receives a weekly gross salary which is 11% higher than the supervised employee.

You have asked the following questions:

"a. Under the above circumstances, is the supervisor entitled to a supervisorial adjustment over the subordinate?"



Mr. John J. Walsh

3

September 14, 1977

Section IV H(5) of the Salary Standardization Ordinance authorizes a supervisorial differential adjustment under the following condition:

"5. That the compensation schedule of the supervisory employee is less than 5 percent over the basic straight time compensation schedule exclusive of premium pay for the normal work week of the class so supervised."

The salary schedule provided in Section XIV of the Salary Standardization Ordinance for 1976-77 is based on a normal work week of 40 hours. An employee whose normal work week is 35 hours shall receive a prorata amount of the salary schedule designated for the 40 hour work week in Section XIV of the ordinance (See Section II J, Salary Standardization Ordinance for 1976-77).

The proration is established as follows under Section II J of the ordinance:

". . . The schedules of compensations contained in this ordinance will be adjusted on a pro-rata basis to reflect the hours of employment for such classes.

"The bi-weekly schedules of compensation contained in this ordinance for the classifications indicated will be adjusted to an hourly amount by dividing said schedule by 80 to the nearest whole cent and then multiplying by the number of hours of employment of the particular classification in a bi-weekly period to the nearest whole cent to determine the bi-weekly rate of pay."

Thus, in the subject situation, the subordinate employee, although placed in a higher salary schedule than the supervisory employee, actually receives 11% less than the supervisor due to application of the prorated formula based on the subordinate's shorter work week.

THE UNIVERSITY OF CHICAGO

THE UNIVERSITY OF CHICAGO

THE UNIVERSITY OF CHICAGO

THE UNIVERSITY OF CHICAGO

THE UNIVERSITY OF CHICAGO

THE UNIVERSITY OF CHICAGO

THE UNIVERSITY OF CHICAGO

Mr. John J. Walsh

4

September 14, 1977

It is therefore my opinion that the supervisory employee is not entitled to a salary adjustment under Section IV H of the Salary Standardization Ordinance for 1976-77 because his salary is more than 5% greater than the salary of the subordinate employee.

"b. If the subordinate occasionally works overtime to the extent that his gross pay for a particular biweekly period is such that it is within 5% of, or exceeds, the gross pay of his superior, would the superior be entitled to a supervisory differential?"

Section IV H(5), quoted in (a) above, authorizes the supervisory salary adjustment only when there is a salary differential of less than 5% over the "basic straight time compensation schedule exclusive of premium pay" of the subordinate employee. Therefore, the supervisor would not be entitled to a supervisory salary adjustment based on premium salary paid the subordinate employee for overtime work.

"c. If the subordinate is regularly assigned overtime work to the extent that his gross pay is always as described in b. above, would the supervisor be entitled to supervisory adjustment?"

A supervisor who is in charge of an employee who is regularly assigned overtime work would not be entitled to a supervisory salary adjustment because the 5% salary differential specified in Section IV H(5) of the ordinance is based on straight time compensation of the subordinate and not the premium pay that such employee may receive. Overtime pay which is received on a regular basis is still premium pay and must be excluded when determining eligibility for supervisory salary adjustments under Section IV H(5) of the Salary Standardization Ordinance.

Very truly yours,

THOMAS M. O'CONNOR
City Attorney

THE JOURNAL OF THE
ROYAL ANTHROPOLOGICAL INSTITUTE
LONDON
1900

THE JOURNAL OF THE
ROYAL ANTHROPOLOGICAL INSTITUTE
LONDON
1900

THE JOURNAL OF THE
ROYAL ANTHROPOLOGICAL INSTITUTE
LONDON
1900

THE JOURNAL OF THE
ROYAL ANTHROPOLOGICAL INSTITUTE
LONDON
1900

THE JOURNAL OF THE
ROYAL ANTHROPOLOGICAL INSTITUTE
LONDON
1900

THE JOURNAL OF THE
ROYAL ANTHROPOLOGICAL INSTITUTE
LONDON
1900

THE JOURNAL OF THE
ROYAL ANTHROPOLOGICAL INSTITUTE
LONDON
1900

SF City Attorney

September 14, 1977

Charles R. Gain, Chief
San Francisco Police Department
Hall of Justice
850 Bryant Street
San Francisco, California 94103

Subject: Creation of New Position of Q3 Police Officer
with Bilingual Skills

Dear Chief Gain:

This is in response to your request for opinion whether the Police Commission can create a new classification of Q3 Police Officer who possesses bilingual skills in addition to the regular responsibilities of a Q2 Police Officer. You have stated that the qualifications to become a Q3 Police Officer would be the same as existing class Q2 Police Officer except that the Q3 Police Officer must also possess bilingual skills. There is an existing Q2 Police Officer civil service list which may contain eligibles who are bilingual, but such eligibles cannot be appointed ahead of other eligibles on the list since the original examination announcement did not provide for preferential appointment of bilingual persons (See City Attorney Opinion dated January 21, 1977).

The several ranks of the Police Department are designated in Section 3.531 of the Charter and included therein is a rank of patrol officer. In addition, Section 3.531 authorizes the Police Commission to establish:

" . . . such other ranks or positions as the police commission may from time to time create as provided for in section 3.530 of this charter."



Charles R. Gain

2

September 14, 1977

The Police Commission would have the authority under Section 3.531 of the Charter to create the Q3 Police Officer position as prescribed in Section 3.530 of the Charter. It is my opinion that the proposed Q3 Police Officer classification would be a new position and not a new rank. The term "position" is ordinarily used to describe a job with defined duties and responsibilities, and the term "rank" is ordinarily used in its military sense to define the level of the job such as sergeant, lieutenant and captain (Jones v. City of Los Angeles, 251 Cal.App.2d 819, 821). Thus, there are several ranks of the Police Department which have different levels of responsibility but within those ranks, there are various positions to accomplish the different duties and responsibilities required in police work.

The proposed classification of Q3 Police Officer would not be a new rank because the level of responsibility of the proposed Q3 Police Officer classification will be identical to that of the existing Q2 Police Officer rank except for the additional requirement of bilingual skills. The Q3 Police Officer position would be of equal rank to the Q2 Police Officer position because both positions perform similar levels of police work with the difference being that the Q3 Police Officer can utilize bilingual skills.

If it is determined that an entry level bilingual police officer position is necessary, the Police Commission should determine the languages required for the bilingual skills, the level of skill needed and the precise duties that such officer will be required to fulfill in addition to regular Q2 Police Officer work. The Police Commission should then request the Civil Service Commission to establish a classification for the new position and announce an examination for that position. The examination qualifications should be identical to those of the Q2 Police Officer rank with the addition of a test for bilingual skills.

| | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|-----|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 | 21 | 22 | 23 | 24 | 25 | 26 | 27 | 28 | 29 | 30 | 31 | 32 | 33 | 34 | 35 | 36 | 37 | 38 | 39 | 40 | 41 | 42 | 43 | 44 | 45 | 46 | 47 | 48 | 49 | 50 | 51 | 52 | 53 | 54 | 55 | 56 | 57 | 58 | 59 | 60 | 61 | 62 | 63 | 64 | 65 | 66 | 67 | 68 | 69 | 70 | 71 | 72 | 73 | 74 | 75 | 76 | 77 | 78 | 79 | 80 | 81 | 82 | 83 | 84 | 85 | 86 | 87 | 88 | 89 | 90 | 91 | 92 | 93 | 94 | 95 | 96 | 97 | 98 | 99 | 100 |
|---|---|---|---|---|---|---|---|---|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|-----|

Charles R. Gain

3

September 14, 1977

It should be noted that eligibles on the present Q2 Police Officer list who possess bilingual skills could compete in the Q3 Police Officer test by merely taking the bilingual portion of that examination. Upon successful completion of the bilingual test, such eligibles would be ranked on the Q3 list, together with new candidates who would be taking both the Q2 Police Officer and bilingual portions of the Q3 Police Officer test.

The Q3 Police Officer list which is established by civil service examination will be separate from the existing Q2 Police Officer list and you can submit requisitions for appointments from either list depending upon the needs of your department.

Very truly yours,

THOMAS M. O'CONNOR
City Attorney



September 15, 1977

Mr. Gilbert H. Boreman, Clerk
Board of Supervisors
235 City Hall
San Francisco, Calif.

Subject: Applicability of Charter Section 8.100
to Members of the Local Advisory Board,
Child Health and Disability Prevention
Program

Dear Mr. Boreman:

This office has reviewed your letter of September 6, 1977 in which you attach a copy of a communication from the chairman of the Local Advisory Board, Child Health and Disability Prevention Program, requesting that the Board of Supervisors waive the residency requirement set forth in Charter Section 8.100 in order that a member of the Local Advisory Board who lives in San Mateo may continue to serve.

Initially, for your information, it should be noted that Charter Section 8.100(a) imposes a residency requirement on members of all appointive boards or commissions. However, the residency requirement of Section 8.100(a) applies only to Charter Board and Commissions, i.e. boards or commissions created in the Charter or by the Board of Supervisors pursuant to authority set forth in the Charter. In the event a board or commission is a Charter board or commission as specified in Charter Section 8.100(a), the Board of Supervisors is powerless by ordinance or by any other means to nullify or waive that requirement.

The local advisory board of the Child Health and Disability Prevention Program is created in the Health and Safety Code Section 307.3 thereof. Neither that section nor any other provision of State law imposes any residency requirement as a qualification for serving on that board.

A second question may arise regarding whether the Administrative Code Section 16.99 which requires that officers and employees of the City and County reside within five miles of the physical boundaries of the City applies to membership on this local advisory board. The question would be whether a member of this advisory board is an officer of the City and County of San Francisco. An officer is defined by Charter Section 1.103 in



Mr. Gilbert H. Boreman

2

September 15, 1977

detail. Section 1.103 provides:

"The officers of the city and county shall be the officers elected by vote of the people, members of the board of education, members of boards and commissions appointed by the mayor, members of the juvenile probation and adult probation boards or committees, members of the board of law library trustees, the superintendent of schools, the clerk of the municipal court, the secretary and jury commissioner of the superior court, the executive appointed by each board or commission as the chief executive officer under such board or commission, the controller, the chief administrative officer, the head of each department under the chief administrative officer and the coroner, public administrator, county clerk, tax and license collector, recorder, registrar of voters, horticultural commissioner, sealer of weights and measures, and such other officers as may hereafter be provided by law or so designated by ordinance."

It must be concluded that a member of a local advisory board is neither an officer nor an employee within the meaning of Section 1.103 of the Charter.

For all the reasons set forth above, you are advised that residency in the City and County of San Francisco or within five miles thereof is not a qualification for service on the Local Advisory Board to the Child Health and Disability Prevention Program.

Very truly yours,

THOMAS M. O'CONNOR
City Attorney

| | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|-----|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 | 21 | 22 | 23 | 24 | 25 | 26 | 27 | 28 | 29 | 30 | 31 | 32 | 33 | 34 | 35 | 36 | 37 | 38 | 39 | 40 | 41 | 42 | 43 | 44 | 45 | 46 | 47 | 48 | 49 | 50 | 51 | 52 | 53 | 54 | 55 | 56 | 57 | 58 | 59 | 60 | 61 | 62 | 63 | 64 | 65 | 66 | 67 | 68 | 69 | 70 | 71 | 72 | 73 | 74 | 75 | 76 | 77 | 78 | 79 | 80 | 81 | 82 | 83 | 84 | 85 | 86 | 87 | 88 | 89 | 90 | 91 | 92 | 93 | 94 | 95 | 96 | 97 | 98 | 99 | 100 |
|---|---|---|---|---|---|---|---|---|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|-----|

CONTENTS

101

102

103

104

105

106

107

108

109

110

111

112

113

114

115

116

117

118

119

120

121

122

123

124

125

126

127

128

129

130

131

132

133

134

135

136

137

138

139

140

141

142

143

144

145

146

147

148

149

150

151

152

153

154

155

156

157

158

159

160

161

162

163

164

165

166

167

168

169

170

171

172

173

174

175

176

177

178

179

180

181

182

183

184

185

186

187

188

189

190

191

192

193

194

195

196

197

198

199

200

September 21, 1977

Hon. Quentin L. Kopp, President
Board of Supervisors
235 City Hall
San Francisco, Calif.

Subject: Hatch Act; Applicability
to Officers or Employees
of City and County

Dear Supervisor Kopp:

This is in response to your letter wherein you request an opinion as to whether or not an employee of a City and County department or project which is financed in whole or in part by revenue sharing or other federal funds is subject to the provisions of the Hatch Act (5 U.S.C.A., Sections 1501, et seq.), particularly, the provisions of Section 1502(a) thereof. You also ask as to the extent these provisions are applicable to elected local officials.

Section 1502(a), Title 5, United States Code, provides as follows:

"Sec. 1502. Influencing elections, take part in political campaigns; prohibitions; exceptions

"(a) A State or local officer or employee may not --

"(1) use his official authority or influence for the purpose of interfering with or affecting the result of an election or a nomination for office;

"(2) directly or indirectly coerce, attempt to coerce, command, or advise a State or local officer or employee to pay, lend, or contribute anything of value to a



Hon. Quentin L. Kopp

2

September 21, 1977

party, committee, organization, agency or person for political purposes; or

"(3) be a candidate for elective office."

As used in the Hatch Act, the terms "State or local officer or employee" and "State or local agency" are defined as follows:

" 'State or local officer or employee means an individual employed by a State or local agency whose principal employment is in connection with an activity which is financed in whole or in part by loans or grants made by the United States or a Federal agency, but does not include -

"(A) an individual who exercises no functions in connection with that activity; or

"(B) an individual employed by an educational or research institution, establishment, agency, or system which is supported in whole or in part by a State or political subdivision thereof, or by a recognized religious, philanthropic, or cultural organization." (emphasis added.)

(5 U.S.C.A. Section 1501(4).1)

" 'State or local agency' means the executive branch of a State, municipality, or other political subdivision of a State, or an agency or department thereof." (Emphasis added.) (5 U.S.C.A. Sec. 1501(2))

Section 1503 of Title 5, United States Code, provides as follows:

"Section 1503. Nonpartisan candidacies permitted.

"Section 1502(a)(3) of this title does not prohibit any State or local officer or employee



Hon. Quentin L. Kopp

3

September 21, 1977

from being a candidate in any election if none of the candidates is to be nominated or elected at such election as representing a party any of whose candidates for Presidential elector received votes in the last preceding election at which Presidential electors were selected."

Accordingly, in answer to your first question, in my opinion, an employee of a City and County department or project which is financed in whole or in part by federal funds is subject to the provisions of subsections (a)(1) and (a)(2) of Section 1502 of Title 5, United States Code, if:

1. The City and County department in which said employee is employed is a part of the executive branch of City and County government or the project on which said employee is employed is under the jurisdiction of a department of the executive branch of City and County government; and
2. Said employee's principal employment is connected with an activity of said department or project which is financed in whole or in part by federal funds.

Said employee would also be subject to the provisions of subsection (a)(3) of Section 1502 if the elective office for which he or she is a candidate is a partisan office.

A review of the cases involving alleged violations of Section 1502(a) of Title 5, United States Code, indicates that the question as to whether or not an employee is employed in the executive branch of government has presented no problem, but the question as to whether or not such an employee's "principal employment" is in connection with an activity which is financed in whole or in part by federal funds is one that has been decided only on a case by case basis and that the courts have enunciated no general rule as to what constitutes "principal employment."

With respect to your second question, subsections (c)(2), (c)(3) and (c)(4) of Section 1502 provide that subsection (a)(3) of said section ("A State or local officer may not -- be a candidate



Hon. Quentin L. Kopp

4

September 21, 1977

for elective office . . .") does not apply to a mayor of a city, a duly elected head of an executive department of a municipality who is not classified under a municipal merit or civil service system, or an individual holding elective office. However, the persons enumerated in subsection (c)(2), (c)(3) and (c)(4) of Section 1502 are not exempted from the restrictions set forth in subsections (a)(1) and (a)(2) of Section 1502.

Accordingly, in answer to your second question, it is my opinion that the provisions of subsections (a)(1) and (a)(2) of Section 1502 are applicable to an elected official of the City and County if said elected official is part of the executive branch of said City and County government and if said elected official's principal employment is in connection with an activity which is financed in whole or in part by federal funds.

In closing, I believe that your attention should be called to the 1974 Amendments to the Hatch Act. Prior to said amendments, the provisions of subsection (a)(3) of Section 1502, when read together with the provisions of subsection (c) of Section 1502 and the provisions of Section 1503, permitted participation on the part of State and local officers in non partisan political activities, and prohibited any participation on the part of State or local officers or employees, other than elective officers, in partisan political activities. The 1974 amendments, in effect, provide that any non-elective State or local officer or employee may take an active part in any partisan political activity, except that he or she may not be a candidate for a partisan elective office. (Pub.L. 93-443, Title IV, Secs. 401(a), 401(b)(1), 401(c), 88 Stat. 1290, U.S. Code Cong. & Adm. News, pp. 1470, 5669.)

Very truly yours,

THOMAS M. O'CONNOR
City Attorney



SF City Attorney

Letter Opinion No. 77-43

RECORDED

INDEXED

PUBLIC LIBRARY

October 19, 1977

Mr. Patrick Mahler
Employee Relations Director
Board of Supervisors
235 City Hall
San Francisco, CA 94102

Subject: Authority to Make Unit Determinations
Per Employer-Employee Relations Ordinance

Dear Mr. Mahler:

This is in response to your request for an opinion regarding the authority of the Employee Relations Division and the Civil Service Commission to place or transfer classifications within the representation unit system.

San Francisco Administrative Code Section 16.210 establishes thirteen unit designations for various classifications of city and county employees. Unit designation and union representation election procedure are set forth in the Administrative Code pursuant to Government Code Sec. 3507, which permits the adoption of reasonable rules and regulations to implement employee organizational rights (Chapter 10, Govt. Code, Meyers-Milias-Brown Act).

Administrative Code Sec. 16.203(a) places with the Employee Relations Division the duty to implement the provisions of the Meyers-Milias-Brown Act:

1. The first part of the paper

is

the

second part of the paper

is

the

third part of the paper

is

the

fourth part of the paper

is

the

fifth part of the paper

is

the

is

the

is

the

is

the

is

the

is

the

is

the

is

the

is

the

is

the

is

the

is

the

is

is

the

is

the

is

Mr. Patrick Mahler

2

October 19, 1977

"(a) There is hereby created an Employee Relations Division which shall be placed under the control and jurisdiction of the Board of Supervisors. Said division shall be headed by an Employee Relations Director who shall serve as the representative of the City and County of San Francisco in the implementation of those provisions of Chapter 10 of the Government Code applicable to the City and County of San Francisco and which are not specifically delegated by charter provisions and/or ordinance to a particular officer, board or commission of the City and County."

The duty to place existing and subsequently created classifications within a unit is not specifically delegated to any officer, board or commission. Therefore, the general delegation of authority to the Employee Relations Division contained in Section 16.203(a) is controlling.

The Civil Service Commission is the successor to the powers and duties of the Municipal Employees Relations Panel. Those powers are set forth in Administrative Code Sec. 16.204, including the power to conduct representative elections, certify and decertify recognized employee organizations, to investigate charges of unfair labor practices, to administratively process matters before administrative law judges and to adopt rules and regulations to carry out these duties. Placement of classifications in particular units is not one of the enumerated functions of the commission. The Civil Service Commission becomes involved in the unit determination process only in the event that an employee disagrees with the Employee Relations Division's unit determination. Sec. 16.210(b) provides for a hearing and final determination by an administrative law judge of unit determination disputes. Sec. 16.204(a)(6) directs the Civil Service Commission to process hearing requests and to "... attempt to obtain the agreement of the parties involved on the disputed issue(s) before the matter is submitted to an administrative law judge."

In my opinion the Employee Relations Division has the sole authority and duty to place or transfer classifications within or between units deemed appropriate by the director.

(1) (2) (3) (4) (5) (6) (7) (8) (9) (10)

1910-1911

| The following table shows the number of cases of diphtheria reported in the United States during the years 1910-1911, by age and sex. | | | | | | | | | |
|---|--------|--------|--------|-------------|------|--------|-------|--------------------|------|
| Age | Male | Female | Total | Age | Male | Female | Total | Age | Male |
| Under 5 years | 1,234 | 1,123 | 2,357 | 15-19 years | 456 | 432 | 888 | 25-29 years | 123 |
| 5-9 years | 987 | 901 | 1,888 | 20-24 years | 321 | 298 | 619 | 30-34 years | 87 |
| 10-14 years | 765 | 712 | 1,477 | 35-39 years | 210 | 198 | 408 | 45-49 years | 54 |
| 15-19 years | 543 | 501 | 1,044 | 40-44 years | 156 | 143 | 299 | 50-54 years | 43 |
| 20-24 years | 321 | 298 | 619 | 45-49 years | 109 | 101 | 210 | 55-59 years | 32 |
| 25-29 years | 210 | 198 | 408 | 50-54 years | 76 | 71 | 147 | 60-64 years | 21 |
| 30-34 years | 123 | 112 | 235 | 55-59 years | 54 | 50 | 104 | 65-69 years | 15 |
| 35-39 years | 87 | 81 | 168 | 60-64 years | 43 | 40 | 83 | 70-74 years | 11 |
| 40-44 years | 54 | 50 | 104 | 65-69 years | 32 | 30 | 62 | 75-79 years | 8 |
| 45-49 years | 43 | 40 | 83 | 70-74 years | 21 | 20 | 41 | 80-84 years | 5 |
| 50-54 years | 32 | 30 | 62 | 75-79 years | 15 | 14 | 29 | 85-89 years | 3 |
| 55-59 years | 21 | 20 | 41 | 80-84 years | 8 | 7 | 15 | 90-94 years | 1 |
| 60-64 years | 15 | 14 | 29 | 85-89 years | 3 | 3 | 6 | 95-99 years | 0 |
| 65-69 years | 11 | 10 | 21 | 90-94 years | 1 | 1 | 2 | 100 years and over | 0 |
| 70-74 years | 8 | 7 | 15 | | | | | | |
| 75-79 years | 5 | 5 | 10 | | | | | | |
| 80-84 years | 3 | 3 | 6 | | | | | | |
| 85-89 years | 1 | 1 | 2 | | | | | | |
| 90-94 years | 0 | 0 | 0 | | | | | | |
| 95-99 years | 0 | 0 | 0 | | | | | | |
| 100 years and over | 0 | 0 | 0 | | | | | | |
| Total | 10,123 | 9,456 | 19,579 | | | | | | |

Mr. Patrick Mahler

3

October 19, 1977

This includes the power to: 1) place classifications in units (2) transfer classifications to another appropriate unit 3) transfer a classification between units represented by different employee organizations and; 4) transfer a classification from a unit represented by a certified employee organization to one without representation. Such placement or transfer must be reasonably related to the purposes of the unit determination system and is subject to employee appeal. You are further advised that ordinance No. 313-76 does not need to be amended to define the authority of the Employee Relations Division.

Very truly yours,

THOMAS M. O'CONNOR
City Attorney

SF City Attorney

Letter Opinion No. 77-44

October 27, 1977

Mr. Gilbert H. Boreman
Clerk of the Board
Board of Supervisors
City and County of San Francisco
235 City Hall
San Francisco, CA 94102

Subject: Scope And Applicability Of
Civil Service Commission
Rule 34 (Grievance Procedure)

Dear Mr. Boreman:

This letter is in response to your request on behalf of Mr. Patrick J. Mahler for my opinion regarding the scope and applicability of a grievance procedure adopted by the Civil Service Commission (Rule 34).

The Civil Service Commission (hereinafter referred to as the "commission"), in adopting Rule 34, replaced a voluntary, non-binding grievance procedure with one which would subject departmental decision making and rule and ordinance interpretations to a mandatory five step arbitration procedure. An arbitrable grievance is defined in Rule 34 as ". . . any dispute concerning the interpretation or application of the provisions of a memorandum of understanding, or in the absence of a memorandum of understanding, a dispute concerning department rules and regulations governing personnel practices or working conditions . . . grievances shall be considered only on matters within the power of the appointing officer to act."



Mr. Gilbert H. Boreman

2

October 27, 1977

The power to adopt and interpret rules and regulations for the operation of a City department is vested in the board, commission or the Chief Administrative Officer which, by Charter, is responsible for the performance of the department. Charter Section 3.500 grants to boards and commissions appointed by the Mayor the power and duty "to prescribe reasonable rules and regulations not inconsistent with the Charter for the conduct of its affairs, for the distribution and performance of its business, for the conduct and government of its officers and employees and for the administration, custody and protection of property under its control . . ." (Emphasis added)

Charter Section 3.201 grants to the Chief Administrative Officer the power and duty ". . . to prescribe general rules and regulations for the administrative service under his control . . ."

Charter Section 3.661 grants to the commission the power to ". . . adopt rules to carry out the civil service provisions of this charter . . ." As the employment and personnel office for the City and County, the commission is invested by Charter with the authority to classify and re-classify Civil Service positions, review departmental disciplinary actions, collect salary data and to manage the City's merit hiring and promotion system.

The employment and personnel authority of the commission does not extend to those departmental decisions made pursuant to Charter Sections 3.201 and 3.500, even though they may have an effect upon employees. The Civil Service Commission is without power to effect rules, regulations or a memorandum of understanding adopted or entered into by the Chief Administrative Officer or a board or commission on subject matter not within the authority of the Civil Service Commission. For instance, the assignment of librarians to library branches is solely within the discretion of the librarian and the Library Commission. The Library Commission could establish an assignment procedure and adopt a library grievance procedure. However, the Civil Service Commission has no Charter granted power to obligate a department to adopt a grievance procedure for use by employees who disagree with departmental assignments.

Mr. Gilbert H. Boreman

3

October 27, 1977

Therefore, it is my opinion that Rule 34 may be made use of by a department but is not mandatory unless adopted by the Chief Administrative Officer or a board or commission.

Should an officer, board or commission make use of Rule 34's "Step 5 - Arbitration Process", the arbitrator's decision regarding the implementation of a departmental rule or regulation cannot be subject to final and binding arbitration. The Court of Appeal in San Francisco Fire Fighters vs. City and County of San Francisco (1977) 68 C.A.3d 896 ruled that:

" . . . neither the City's mayor, nor its board of supervisors, nor its fire commission, had authority to approve the Memorandum's provisions for arbitration of grievances concerning the fire commission's rules and regulations." (p. 902)

The court's decision was based upon the principle that

" . . . public powers conferred upon a municipal corporation and its officers and agents cannot be delegated to others, unless so authorized by the legislature or charter. In every case where the law imposes a personal duty upon an officer in relation to a matter of public interest, he cannot delegate it to others, as by submitting it to arbitration." (The court quoted from 2 McQuillin, the Law of Municipal Corporation (3 ed. 1966) Section 10.39)

The courts have not spoken to the question of the use of binding arbitration in a dispute on the interpretation or application of a provision of a memorandum of understanding, ordinance, rule or regulation. Until such time as the courts broaden the scope of the Fire Fighters decision, it is my opinion that interpretation and application can be subject to binding arbitration.

Editorial: The Journal of the Royal Society of Medicine in 2007

Original papers

Review article

Correspondence

Announcements

Index

Mr. Gilbert H. Boreman

4

October 27, 1977

As I set forth above, I am of the opinion that the Civil Service Commission cannot mandate a department to use a grievance procedure for disputes involving departmental rules, regulations or memoranda of understanding or the interpretation thereof. It can, however, promulgate for the voluntary adoption of a department the Rule 34 grievance procedure, subject to the limitations on the use of binding arbitration outlined above.

Very truly yours,

THOMAS M. O'CONNOR
City Attorney

SF City Attorney

Letter Opinion No. 77-45

RECORDED
INDEXED
FBI - S.F.

November 16, 1977

Charles R. Gain, Chief
San Francisco Police Department
850 Bryant Street
San Francisco, California 94103

Subject: Accumulation of Seniority in Role of Sergeant
While Serving as Assistant Inspector

Dear Chief Gain:

This letter is in response to your request for an opinion regarding the status of sergeants who elect to become assistant inspectors, or assistant inspectors who are appointed sergeants but elect to remain in the Bureau of Inspectors as assistant inspectors, vis-a-vis seniority, probation, promotion, etc.

An examination of the law on this subject has led this office to conclude the following:

1. When a sergeant is appointed to the rank of assistant inspector, or when an assistant inspector is appointed to the rank of sergeant and elects to remain with the Bureau of Inspectors, such an election constitutes a waiver of the actual rank of sergeant.
2. When a sergeant is appointed to the Bureau of Inspectors as an assistant inspector, or when an assistant inspector is appointed to the rank of sergeant but elects to perform the duties of an assistant inspector and receive compensation for the rank of sergeant pursuant to Charter Section 3.534, such appointee does not acquire seniority in



Charles R. Gain

2

November 16, 1977

both ranks, but thereafter should only be credited with seniority toward the rank of assistant inspector; nor is such person eligible to test for the rank of lieutenant. (See Charter, Section 8.327.)

3. When an assistant inspector is appointed to the rank of sergeant and elects to remain in the Bureau of Inspectors as an assistant inspector receiving compensation at the rate of a sergeant, any service as an assistant inspector after such election will not constitute service as a sergeant for the purpose of computing service of the required six months probationary period of the rank of sergeant.

Section 3.531 of the City Charter delineates the ranks which are to make up the Police Department in the following language:

"The several ranks or positions in the department shall be as follows: chief of police, captains, criminologists, lieutenants, inspectors, sergeants, assistant inspectors . . ." (Emphasis added.)

The section sets forth the ranks listed therein as separate and distinct classifications. This distinctness, especially in those levels making up the Bureau of Inspectors, is designated in Section 3.534 of the Charter. That section sets forth the special criteria necessary to achieve a rank within the Bureau as an assistant, and ultimately a full inspector (i.e., by competitive examination open only to sergeants, police officers and women protective officers who have three years service).

Charter Section 3.534 states:

". . . The Chief of Police shall appoint assistant inspectors to fill vacancies in the rank of assistant inspector from the certified list of qualified candidates by order of the grade achieved in the examination; provided, however, if any member of the department appointed as an assistant inspector is a sergeant at the time of appointment or is appointed a sergeant thereafter, he shall receive the rate of compensation attached to the rank of sergeant." (Emphasis added.)

The first part of the paper is devoted to a review of the literature on the topic of the role of the state in the development of the economy. The second part of the paper is devoted to a review of the literature on the topic of the role of the state in the development of the economy.

The third part of the paper is devoted to a review of the literature on the topic of the role of the state in the development of the economy. The fourth part of the paper is devoted to a review of the literature on the topic of the role of the state in the development of the economy.

The fifth part of the paper is devoted to a review of the literature on the topic of the role of the state in the development of the economy. The sixth part of the paper is devoted to a review of the literature on the topic of the role of the state in the development of the economy.

The seventh part of the paper is devoted to a review of the literature on the topic of the role of the state in the development of the economy. The eighth part of the paper is devoted to a review of the literature on the topic of the role of the state in the development of the economy.

The ninth part of the paper is devoted to a review of the literature on the topic of the role of the state in the development of the economy. The tenth part of the paper is devoted to a review of the literature on the topic of the role of the state in the development of the economy.

The eleventh part of the paper is devoted to a review of the literature on the topic of the role of the state in the development of the economy. The twelfth part of the paper is devoted to a review of the literature on the topic of the role of the state in the development of the economy.

Charles R. Gain

3

November 16, 1977

The emphasized language in the above quoted section does not purport to set up a new rank, i.e., that of a combination sergeant-assistant inspector. Charter Section 3.531, discussed above, establishes specific ranks within the department. Thus, the only consistent interpretation of this passage of Section 3.534 is that:

1. sergeants who are appointed to the rank of assistant inspector, or;
2. assistant inspectors who are appointed sergeants but elect to remain in the Bureau of Inspectors as an assistant inspector have the rank of assistant inspector only, to be paid at a special rate, i.e., the same pay which a sergeant in the uniformed divisions of the San Francisco Police Department would receive.

As a member of the San Francisco Police Department, Bureau of Inspectors, who is performing the special duties assigned to the rank of assistant inspector, such person is bound by those rules and regulations of the San Francisco Police Department governing probation, seniority, promotion, etc. which pertain to assistant inspectors only.

The purpose of a probationary term is to permit the Department to evaluate the probationer's abilities and qualifications for the particular position in which he is presently serving. To permit a member of the department who is performing the separate, special duties of an assistant inspector to count such service as fulfilling the probationary period required to achieve the rank of sergeant defeats the very purpose of such probation, since the Department has had no opportunity to evaluate the capabilities of the employee in the distinct role of a sergeant.

The same rationale applies to the question of seniority. Given the separate function and distinct duties of an assistant inspector as contrasted with those of a sergeant, it is only logical to conclude that a person serving in the rank of assistant inspector, no matter what his pay, accumulates seniority during such service only for his elevation within the Bureau of Inspectors.

THE JOURNAL OF THE
THE JOURNAL OF THE
THE JOURNAL OF THE

THE JOURNAL OF THE
THE JOURNAL OF THE
THE JOURNAL OF THE

THE JOURNAL OF THE
THE JOURNAL OF THE
THE JOURNAL OF THE

THE JOURNAL OF THE
THE JOURNAL OF THE
THE JOURNAL OF THE

THE JOURNAL OF THE
THE JOURNAL OF THE
THE JOURNAL OF THE

Charles R. Gain

4

November 16, 1977

To achieve a consistent interpretation of the various Charter sections involved, it is my opinion that (1) if a sergeant who has completed the probationary period in that rank elects to accept an appointment as an assistant inspector; and (2) if an assistant inspector is appointed as a sergeant but elects to remain in the Bureau of Inspectors (at the rate of pay as a sergeant), then such decision constitutes an election to pursue his or her law enforcement career as a member of the Bureau of Inspectors and such election operates as a waiver of the rank of sergeant.

An assistant inspector is not a next lower rank eligible to take the examination for lieutenant under Section 8.327 of the Charter. Therefore, an assistant inspector can promote only to the rank of 0380 Inspector unless such person has already completed the probationary period to sergeant and in that event, such person can take the examination for lieutenant. If an assistant inspector has not taken the examination for sergeant, or has not completed the probationary period as a sergeant, then such person would have to take the sergeant examination, be appointed to that rank and serve the probationary period therein in order to qualify for the lieutenant examination.

In conclusion, the decision of a person to accept a position as Q35 Assistant Inspector or to remain as an assistant inspector at the rate of compensation as a sergeant as provided in Section 3.534 of the Charter, shall entitle that person to only those rights and privileges which are due an assistant inspector of the Bureau of Inspectors.

Very truly yours,

THOMAS M. O'CONNOR
City Attorney

The first of these is the question of the origin of the human race. It is generally accepted that the human race originated in Africa, and that it spread from there to other parts of the world. This is supported by the fact that the greatest genetic diversity is found in African populations. The second question is the question of the relationship between the different races of man. It is generally accepted that the different races of man are descended from a common ancestor, and that they have diverged from one another over time. This is supported by the fact that the different races of man share many common characteristics, such as the same basic anatomy and the same basic language.

The third question is the question of the development of the human mind. It is generally accepted that the human mind has developed from a simple, primitive state to a more complex, advanced state. This is supported by the fact that the human mind is capable of a wide range of activities, such as reasoning, problem-solving, and the use of tools. The fourth question is the question of the development of human culture. It is generally accepted that human culture has developed from a simple, primitive state to a more complex, advanced state. This is supported by the fact that human culture is capable of a wide range of activities, such as the creation of art, the development of science, and the establishment of social norms.

The fifth question is the question of the future of the human race. It is generally accepted that the human race will continue to develop and evolve over time. This is supported by the fact that the human race has a long history of adaptation and survival. The sixth question is the question of the relationship between the human race and the rest of the world. It is generally accepted that the human race is a part of the natural world, and that it is subject to the same laws of nature as all other organisms. This is supported by the fact that the human race shares many common characteristics with other organisms, such as the same basic anatomy and the same basic language.

7
16 SF City Attorney
Letter Opinion No. 77-46

NOV 17 1977
November 17, 1977

Mr. Rai Okamoto
Director of Planning
100 Larkin Street
San Francisco, CA 94102

Subject: Areawide Rent Control for Residential
Rehabilitation Assistance Areas

Dear Mr. Okamoto:

You have inquired regarding the legality of areawide rent control for Rehabilitation Assistance Program (RAP) areas. Chapter 32 of the San Francisco Administrative Code. It is my opinion that if the Board of Supervisors made appropriate findings the Board could establish rent control measures in RAP areas.

Areas of the City are selected for participation in RAP when there is a finding that there are a substantial number of code violations in the area and that the program is needed to arrest deterioration of the area. RAP is concentrated code enforcement coupled with financing for property owners, relocation benefits for persons displaced as a result of the code enforcement activity and public improvements in the area designed to insure that the neighborhood is stabilized and will not continue to deteriorate. In short, RAP is slum prevention. That RAP serves a public purpose was recognized in Board of Supervisors of the City and County of San Francisco v. Dolan, 45 C.A. 3d 237, 119 Cal. Rptr. 347 (1975).



Mr. Rai Okamoto

2

November 17, 1977

In Birkenfeld v. City of Berkeley, 17 C. 3d 129 (1976), the California Supreme Court held that rent control can be a proper function of municipal government so long as it is reasonably related to a legitimate governmental purpose. In Birkenfeld the Court concluded that

" . . . the constitutionality of residential rent controls under the police power depends upon the actual existence of a housing shortage and its concomittant ill effects of sufficient seriousness to make rent control a rational curative measure." 17 C. 3d at 160.

The Berkeley rent control ordinance was struck down not because there was not sufficient justification for rent control, but because the provisions and procedures for adjusting rents were such as to make unreasonable delays in adjustments of rent inevitable. It is, therefore, no longer necessary to justify rent control on the grounds of a serious public emergency and the following prior City Attorney Opinions are hereby overruled: No. 4007 of September 17, 1947; No. 683 of March 27, 1953; No. 707 of June 24, 1953 and No. 70-52 of September 28, 1970.

The next question is whether there could be appropriate circumstances under which rent control on an areawide rather than city-wide basis would serve a legitimate governmental purpose. In my opinion, there are. In Birkenfeld, the California Supreme Court explicitly stated that neither the availability of low-income housing in adjoining cities, nor the existence of equally bad housing conditions elsewhere, detracted from Berkeley's power to "safeguard and to promote the health and welfare of persons who choose to live in that city." 17 C. 3d 163. This suggests that particular areas of a city may be singled out for rent control. Furthermore, viewed from the property owner's standpoint, rent control is similar in economic effect to a zoning law controlling the size of a lot or the height of buildings to be erected. The courts have consistently upheld zoning controls even though they differ in various parts of a jurisdiction. Another example of areawide controls is preferential parking in residential areas.

THE JOURNAL OF THE
ROYAL ANTHROPOLOGICAL INSTITUTE

THE JOURNAL OF THE
ROYAL ANTHROPOLOGICAL INSTITUTE

THE JOURNAL OF THE
ROYAL ANTHROPOLOGICAL INSTITUTE

THE JOURNAL OF THE
ROYAL ANTHROPOLOGICAL INSTITUTE

THE JOURNAL OF THE
ROYAL ANTHROPOLOGICAL INSTITUTE

Mr. Rai Okamoto

3

November 17, 1977

In determining that RAP serves a public purpose, the Court in Dolan, supra, recognized that one of the values of rehabilitation as opposed to slum clearance is that rehabilitation -- which is less likely to require people to relocate -- is less disruptive to the lives of the people who live in the area to be renewed. The following quotation adopted by the Court in Dolan, at 45 C.A. 3d 246, is highly relevant to a consideration of whether rent control in RAP areas could be appropriate:

"Rehabilitation has another aspect -- the human aspect -- that is often given too little attention. Neighborhoods, even rundown neighborhoods, often have meaning to their residents. Personal associations, attachment to a church, a sense of community, all involve intangible values worth preserving where they are found or may be stimulated. Rehabilitation may preserve and strengthen these values. Clearance never can. Desirable and unavoidable as it may frequently be, large-scale clearance is always disruptive of community feeling. It contributes, at least temporarily, to the rootlessness and impersonality of urban life. A well established program of rehabilitation, on the other hand, is an influence for stability, for continuity, for identification. It is worthwhile on this score alone." Residential Rehabilitation: Private Profits and Public Purposes, by Colean and Nash (1959), at page xxvi.

In Birkenfeld the Court concluded that rent control could be appropriate if there was a significant housing shortage. In RAP areas, the motivations for rent control would more likely be the desire to stabilize the population of the area being rehabilitated, but this could be approved, too, consistent with the more general principle stated in Birkenfeld that

"In determining the validity of a legislative measure under the police power our sole concern is with whether the measure reasonably relates to a legitimate governmental purpose. . . ."
17 C. 3d 159.

Mr. Rai Okamoto

4

November 17, 1977

If the desire to stabilize the population in a RAP area or areas is the motivation for rent control in these areas, the Board of Supervisors would have to find that the rents in a particular RAP area or in RAP areas generally are rising faster than the incomes of the residents of the area, and that there are a significant number of persons of low or moderate income who will be forced to move without rent controls. If these circumstances exist, in my opinion, the Board of Supervisors could, consistent with Birkenfeld, enact rent control measures for RAP areas.

The final question is whether in authorizing rent control as a condition of governmentally financed loans for rehabilitation of buildings with 12 or more dwelling units, where the loans exceed \$5,000 per dwelling unit, the State Legislature has expressed an intent to occupy the field of rent control, thereby precluding other rent control measures in connection with RAP areas. See Section 37922.5 of the Health and Safety Code. In my opinion, a general rent control measure applicable to all rental dwelling units in RAP areas and enforced other than through the loan mechanism is not precluded by the provisions of Section 37922.5.

The Marks-Foran Residential Rehabilitation Act of 1973 is not a regulatory statute as such. Rather, its purpose is to authorize issuance of bonds to be used for financing "residential rehabilitation in depressed residential areas in order to encourage the upgrading of property in such areas." In addition to authorizing the issuance of bonds for this purpose, the Marks-Foran Act sets forth the conditions on which and under which loans can be made with the bond proceeds. For example, specific criteria and procedures for selection of the areas where the loans will be made have to be followed, and there are limitations on the use of the funds for other than code required work, on the term of the loans, and on the use of bond proceeds for refinancing. Section 37922 of the Health and Safety Code.

Similarly, there are requirements designed to assure that RAP loans are used in a socially desirable way. Under Section 37923 of the Health and Safety Code the housing which is rehabilitated with bond proceeds has to be open to all without regard to race, color, religion, national origin or ancestry, and the rehabilitation work financed with the bond proceeds must be done by contractors who agree to provide equal employment opportunities. To the same end, pursuant to Section 37922.5, RAP borrowers may be prohibited from using

The first part of the paper discusses the importance of the study of the history of the English language. It is argued that a knowledge of the history of the language is essential for a full understanding of the language in its present state. The second part of the paper discusses the importance of the study of the history of the English language. It is argued that a knowledge of the history of the language is essential for a full understanding of the language in its present state.

The third part of the paper discusses the importance of the study of the history of the English language. It is argued that a knowledge of the history of the language is essential for a full understanding of the language in its present state. The fourth part of the paper discusses the importance of the study of the history of the English language. It is argued that a knowledge of the history of the language is essential for a full understanding of the language in its present state.

The fifth part of the paper discusses the importance of the study of the history of the English language. It is argued that a knowledge of the history of the language is essential for a full understanding of the language in its present state. The sixth part of the paper discusses the importance of the study of the history of the English language. It is argued that a knowledge of the history of the language is essential for a full understanding of the language in its present state.

The seventh part of the paper discusses the importance of the study of the history of the English language. It is argued that a knowledge of the history of the language is essential for a full understanding of the language in its present state. The eighth part of the paper discusses the importance of the study of the history of the English language. It is argued that a knowledge of the history of the language is essential for a full understanding of the language in its present state.

The ninth part of the paper discusses the importance of the study of the history of the English language. It is argued that a knowledge of the history of the language is essential for a full understanding of the language in its present state. The tenth part of the paper discusses the importance of the study of the history of the English language. It is argued that a knowledge of the history of the language is essential for a full understanding of the language in its present state.

Mr. Rai Okamoto

5

November 17, 1977

RAP loans as the basis for making excessive increases in rents.

In authorizing jurisdictions acting under their fiscal powers, to impose rent control as a condition of a RAP loan under specified circumstances, the Marks-Foran Act does not purport in any way to affect other actions which might be taken by a jurisdiction under its police powers to deal with the problems associated with deteriorating neighborhoods. To the contrary, Section 37922.2 of the Health and Safety Code encourages the jurisdiction to take other steps to deal with dislocation which it is expected will result from anticipated rent increases:

"If anticipated rent increases or other increases in housing costs will result in .. dislocation of residential rehabilitation area residents or will result in residents paying a disproportionately large percentage of their incomes for housing, the local agency shall make efforts to prevent displacement of residents as a result of the operation of the residential rehabilitation program in residential rehabilitation areas. Such efforts shall include, but need not be limited to, utilization of federal, state, or local funding programs which may be available for rent subsidies. In allocating funds which may become available through federal revenue sharing, the local agency shall give consideration to measures which will assist in preventing displacement of such residents."

The relationship between permissive rental limitations tied to RAP loans and general rent control is similar to the relationship between general rent control and the "extensive state legislation governing many aspects of landlord-tenant relationships, some of which pertain specifically to the determination of payment of rent," discussed in Birkenfeld, supra, at 141-142. There the Court found that there was no evidence of an intent on the part of the State to exclude all local regulation of the landlord-tenant relationship and that there was no conflict between state laws and the Berkeley rent control ordinance. The same reasoning applies here. (See also: Galvan v. Superior Court of the City and County of San Francisco,

THE JOURNAL OF THE
ROYAL ANTHROPOLOGICAL INSTITUTE

THE JOURNAL OF THE
ROYAL ANTHROPOLOGICAL INSTITUTE

THE JOURNAL OF THE
ROYAL ANTHROPOLOGICAL INSTITUTE

THE JOURNAL OF THE
ROYAL ANTHROPOLOGICAL INSTITUTE

THE JOURNAL OF THE
ROYAL ANTHROPOLOGICAL INSTITUTE

THE JOURNAL OF THE
ROYAL ANTHROPOLOGICAL INSTITUTE

Mr. Rai Okamoto

6

November 17, 1977

70 C. 2d 851, 76 Cal. Rptr. 542 (1969)).

It is my conclusion, therefore, that in enacting Section 37922.5 of the Health and Safety Code, the State Legislature did not intend to occupy the field of rent control generally, nor even rent control as it relates to RAP areas. Rather, Section 37922.5 only describes the rent control provisions which may be imposed as a condition of a RAP loan.

Very truly yours,

THOMAS M. O'CONNOR
City Attorney

November 21, 1977

Mr. Gilbert H. Boreman
Clerk of the Board
Board of Supervisors
235 City Hall
San Francisco, California

Subject: Possession of Wild and Dangerous Animals;
Preemption by State Law. Your File 390-77

Dear Mr. Boreman:

You have asked on behalf of the Health and Environment Committee as to whether Section 2150 of the California Fish and Game Code preempts the field of wild animal control so as to prohibit local regulations on the same subject.

Section 2150 of the Fish and Game Code generally requires the obtaining of a permit from the Department of Fish and Game for importation, possession or transportation within the state of any wild animal. This section is part of Division 3 of the Fish and Game Code which contains all of the regulations, except those authorized to be established by the Fish and Game Commission, pertaining to the possession, importation and taking of fish, game and wild animals as defined therein.

However, also contained in said Division of the Code is Section 2156, which provides that neither the provisions in the Fish and Game Code relating to permits for the possession,

THE JOURNAL OF THE ROYAL ANTHROPOLOGICAL INSTITUTE

| | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|-----|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 | 21 | 22 | 23 | 24 | 25 | 26 | 27 | 28 | 29 | 30 | 31 | 32 | 33 | 34 | 35 | 36 | 37 | 38 | 39 | 40 | 41 | 42 | 43 | 44 | 45 | 46 | 47 | 48 | 49 | 50 | 51 | 52 | 53 | 54 | 55 | 56 | 57 | 58 | 59 | 60 | 61 | 62 | 63 | 64 | 65 | 66 | 67 | 68 | 69 | 70 | 71 | 72 | 73 | 74 | 75 | 76 | 77 | 78 | 79 | 80 | 81 | 82 | 83 | 84 | 85 | 86 | 87 | 88 | 89 | 90 | 91 | 92 | 93 | 94 | 95 | 96 | 97 | 98 | 99 | 100 |
|---|---|---|---|---|---|---|---|---|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|-----|

Mr. Gilbert H. Boreman

-2-

November 21, 1977

transportation or importation of wild animals nor any regulations of the Fish and Game Commission shall prevent any municipality from enacting ordinances relating to the possession or care of wild animals which are more restrictive than the general law.

The proposed ordinance amending the Health Code now pending before the Health and Environment Committee, prohibits the possession of wild animals as defined therein within the City and County of San Francisco.

By Section 2156 of the Fish and Game Code the Legislature has expressly manifested no intent to preempt the field of regulation of wild animals with respect to their possession and care and clearly authorizes legislation by a City on the matter. (Burton v. Municipal Court (1968) 68 Cal.2d 684, 690. Watson v. County of Merced (1969) 274 Cal.App.2d 263, 265.) Consequently, since the proposed ordinance with its prohibition of possession is patently more restrictive than the permit regulation of the Fish and Game Code, I am of the opinion that there is no preemption by state law and that the Board of Supervisors may in its discretion validly enact the ordinance as proposed.

Very truly yours,

THOMAS M. O'CONNOR
City Attorney

THE UNIVERSITY OF CHICAGO

LIBRARY OF THE UNIVERSITY OF CHICAGO

THE UNIVERSITY OF CHICAGO
LIBRARY OF THE UNIVERSITY OF CHICAGO
THE UNIVERSITY OF CHICAGO
LIBRARY OF THE UNIVERSITY OF CHICAGO

THE UNIVERSITY OF CHICAGO
LIBRARY OF THE UNIVERSITY OF CHICAGO
THE UNIVERSITY OF CHICAGO
LIBRARY OF THE UNIVERSITY OF CHICAGO

THE UNIVERSITY OF CHICAGO
LIBRARY OF THE UNIVERSITY OF CHICAGO
THE UNIVERSITY OF CHICAGO
LIBRARY OF THE UNIVERSITY OF CHICAGO
THE UNIVERSITY OF CHICAGO
LIBRARY OF THE UNIVERSITY OF CHICAGO
THE UNIVERSITY OF CHICAGO
LIBRARY OF THE UNIVERSITY OF CHICAGO

THE UNIVERSITY OF CHICAGO

THE UNIVERSITY OF CHICAGO

7
8
SF City Attorney

Letter Opinion No. 77-48

November 28, 1977

Mr. Gilbert H. Boreman
Clerk of the Board
Board of Supervisors
235 City Hall
San Francisco, CA 94102

Subject: Board of Supervisors committee meetings outside of
City Hall

Dear Mr. Boreman:

This is in response to your request on behalf of Supervisor Francois for my opinion regarding the power of committees of the Board of Supervisors, excepting emergency circumstances, to conduct meetings outside of the City Hall.

Charter Section 2.200 mandates that all meetings of the Board of Supervisors shall be held in the City Hall:

"The meetings of the board shall be held in the City Hall, provided that, in case of emergency, the board, by resolution, may designate some other appropriate place as its temporary meeting place."

Rule 6 of the Rules of the Board requires the Board of Supervisors to conduct a "regular meeting in the legislative chamber in the City Hall" Rule 7 permits the Board of Supervisors by resolution to designate another meeting location in the case of an emergency.

Rule 50 makes the Rules of the Board applicable to its

NOTES

1911

THE JOURNAL OF THE
ROYAL ANTHROPOLOGICAL INSTITUTE



THE JOURNAL OF THE
ROYAL ANTHROPOLOGICAL INSTITUTE

THE JOURNAL OF THE
ROYAL ANTHROPOLOGICAL INSTITUTE

THE JOURNAL OF THE
ROYAL ANTHROPOLOGICAL INSTITUTE

THE JOURNAL OF THE
ROYAL ANTHROPOLOGICAL INSTITUTE

THE JOURNAL OF THE
ROYAL ANTHROPOLOGICAL INSTITUTE

THE JOURNAL OF THE
ROYAL ANTHROPOLOGICAL INSTITUTE

THE JOURNAL OF THE
ROYAL ANTHROPOLOGICAL INSTITUTE

THE JOURNAL OF THE
ROYAL ANTHROPOLOGICAL INSTITUTE

Gilbert H. Boreman

2

November 28, 1977

committees "whenever practicable:"

"Except that the privilege of the floor may be granted by the committee chairman or as a majority of the committee may decide, and except as otherwise provided, the Rules of the Board shall be applicable in the conduct of all committee meetings whenever practicable. Each committee may, by a majority vote of its members, adopt such additional rules, not in conflict with these rules, as it may consider necessary for the conduct or consideration of any business referred to or initiated by such committee." (Emphasis added.)

Charter Section 2.200, which mandates the Board to conduct meetings in City Hall makes no mention of committees of the Board. Charter Section 2.200, which obligates the Board and its committees to prepare and publish a written calendar prior to the meeting date was amended in 1971 to include committees.

In my opinion Charter Section 2.200 does not apply to meetings of committees of the board. However, the portion of Rule 6, requiring meetings of the board to be conducted in the City Hall, is, pursuant to Rule 50, applicable to its committees whenever practicable. In my opinion if committees are to be permitted to meet outside of City Hall Rule 50 should be amended to make Rule 6 inapplicable to committees.

Although your inquiry is directed solely to the provisions of Section 2.200 of the Charter, any discussion relating to meetings of a local legislative body such as the Board of Supervisors appears to call for some consideration of the provisions of the Ralph M. Brown Act. (Government Code, Section 54950 et seq.) Section 54961 of the Government Code prohibits any local agency (a broader term than "legislative body") conducting any meeting, conference or other function in any facility that prohibits the admittance of any person, or persons, on the basis of race, religious creed, color, national origin, ancestry, or sex. In addition, the strong public policy expressed in the Brown Act that the public business be conducted

THE JOURNAL OF THE
ROYAL ANTHROPOLOGICAL INSTITUTE

| | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|-----|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 | 21 | 22 | 23 | 24 | 25 | 26 | 27 | 28 | 29 | 30 | 31 | 32 | 33 | 34 | 35 | 36 | 37 | 38 | 39 | 40 | 41 | 42 | 43 | 44 | 45 | 46 | 47 | 48 | 49 | 50 | 51 | 52 | 53 | 54 | 55 | 56 | 57 | 58 | 59 | 60 | 61 | 62 | 63 | 64 | 65 | 66 | 67 | 68 | 69 | 70 | 71 | 72 | 73 | 74 | 75 | 76 | 77 | 78 | 79 | 80 | 81 | 82 | 83 | 84 | 85 | 86 | 87 | 88 | 89 | 90 | 91 | 92 | 93 | 94 | 95 | 96 | 97 | 98 | 99 | 100 |
|---|---|---|---|---|---|---|---|---|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|-----|

Gilbert H. Boreman

3

November 28, 1977

openly, suggests that any rule authorizing the holding of committee meetings outside City Hall contain adequate provisions to insure the right of the people to attend such meetings; e.g., that the place of the meeting be readily accessible to the public and that notice of the time and place of any such meeting be given a reasonable time in advance thereof.

Very truly yours,

THOMAS M. O'CONNOR
City Attorney

THE JOURNAL OF THE ROYAL ANTHROPOLOGICAL INSTITUTE, VOL. 100, PART 2, 2000. The volume contains 10 papers, including a review of the book 'The Archaeology of the Neolithic Revolution' by Colin Renfrew, and a paper by Peter J. R. Brown on 'The Archaeology of the Neolithic Revolution in the British Isles'.

CONTENTS

Review of 'The Archaeology of the Neolithic Revolution' by Colin Renfrew
Peter J. R. Brown, 'The Archaeology of the Neolithic Revolution in the British Isles'

E
47
3
-49

SF City Attorney

Letter Opinion No. 77-49

December 2, 1977

Andrew C. Casper, Chief
San Francisco Fire Department
260 Golden Gate Ave.
San Francisco, CA 94102

Subject: Leave of Absence to Employee
Elected to Board of Supervisors

Dear Chief Casper:

You have requested my opinion as follows:

"Daniel J. White, an H2 Firefighter with the San Francisco Fire Department since January, 1974, has been elected to the Board of Supervisors from District 8, effective January 8, 1978.

"Please advise me if Firefighter White is entitled to a Leave of Absence under Section 22.07--Civilian Service in the National Interest--Civil Service Rules, or any other appropriate Civil Service Rules or Charter Sections.

"If your answer to the previous question is in the affirmative, please advise as to the types of issues, if any, that Mr. White would be precluded from voting on while serving as a member of the Board of Supervisors."

Although not directly stated in your request, there is an implication that the positions of H2 Firefighter and member of the Board of Supervisors might be held to be incompatible so as to preclude the same individual from holding both positions concurrently and, accordingly, any such incompatibility might be cured by the individual involved taking a leave of absence from his position of H2 Firefighter during the period he serves as a member of the Board of Supervisors.

It is a well established rule of law that an individual on a leave of absence from his position in the City and County

2. Methodology

2.1. Data Collection

2.2. Data Analysis

2.3. Results



Figure 1: A line graph showing the relationship between two variables over time.

The results of the study are presented in the following table.

| Variable | Value |
|------------|-------|
| Variable 1 | 1.2 |
| Variable 2 | 1.5 |
| Variable 3 | 1.8 |
| Variable 4 | 2.1 |
| Variable 5 | 2.4 |

The results of the study are presented in the following table.

| Variable | Value |
|------------|-------|
| Variable 1 | 1.2 |
| Variable 2 | 1.5 |
| Variable 3 | 1.8 |
| Variable 4 | 2.1 |
| Variable 5 | 2.4 |

The results of the study are presented in the following table.

| Variable | Value |
|------------|-------|
| Variable 1 | 1.2 |
| Variable 2 | 1.5 |
| Variable 3 | 1.8 |
| Variable 4 | 2.1 |
| Variable 5 | 2.4 |

Chief Andrew C. Casper

2

December 2, 1977

service is still an employee of the City and County. (Ballf v. Public Welfare Department (1957) 151 Cal.App.2d 784; see also: McCoy v. Board of Supervisors (1941) 18 Cal.2d 193; Gray v. Bolger (1950) 157 Cal.App.2d 583.)

In the Ballf case, supra, the court stated the rule as follows:

"The fact that a person is on leave from his 'employment' makes him no less an employee. As a matter of fact, petitioner claims to be an employee. He has to be in order to assert the rights claimed by him. Petitioner's right to educational leave is dependent upon his being an employee. Rule 31.3 of the Civil Service Commission provides that educational leave may be granted to a veteran 'who holds permanent civil service status as an officer or employee . . . ' (Emphasis added.) That petitioner was holding his 'employment' is well illustrated by the fact that any time he desired to terminate his leave he could and the person holding it 'vice Mr. Ballf' would have to give it up. For all purposes he was an employee of the department except that his leave temporarily excused him from performing his actual duties. (See Thompson v. Young (D.C. 1945) 63 F. Supp. 890, 891.)"

(151 Cal.App.2d 784, p. 788.)

In view of the foregoing, it is my opinion that a leave of absence would not cure any incompatibility which might be found to exist in the positions of firefighter and supervisors if such is the case. Accordingly, the basic question herein; viz., the question of incompatibility remains.

Generally speaking, two offices may be found to be incompatible either under statute or under the common law. In this regard, Section 8.103 of the Charter provides as follows:

" . . . Any person holding a salaried office under the city and county, whether by election or appointment, who shall, during his term of office, hold or retain any other salaried office under the government of the United States, or of this state, or who shall hold any other salaried office connected with the government of the city and county, or who shall become a member of the legislature, shall be deemed to have thereby vacated the office held by

Chief Andrew C. Casper

3

December 2, 1977

him under the city and county . . ."
(Emphasis added.)

As you will note, the provisions of Section 8.103, supra, call for the concurrence of two factors. Each position must be an "office" and each position must be "salaried." There is no doubt that a supervisor holds a "salaried office." (Charter Sections 1.103, 2.100.) However, a California law is uncertain as to whether firefighter is an "officer" or merely an "employee." (Compare Jackson v. Wilde (1921) 52 Cal.App. 259, 263, with Mason v. City of Los Angeles (1933) 130 Cal.App. 224.)

In Humbert v. Castro Valley County Fire Protection District (1963) 214 Cal.App.2d 1, the court, in holding that a captain was an "officer" of a fire protection district, discussed the contrary holdings of the Jackson case and the Mason case, and attributed them to the differences in the city charters involved. In reaching its decision that a captain of a fire protection district is an "officer" of the district, the court, therefore, relied upon the provisions of the resolution relating to the operation and maintenance of fire protection districts in Alameda County adopted by the county board of supervisors, the equivalent of a city charter. Applying the principle adopted by the court in the Humbert case to the matter herein, it is clear that under the provisions of the City and County Charter, a San Francisco firefighter is an "employee" and not an "officer." "Firefighter" is not included in the Charter enumeration of officers of the City and County (Charter Section 1.103) but is listed as the entrance rank in the uniformed forces of the Fire Department (Charter Sections 3.542, 8.320.) (See also: Neigel v. Superior Court (Aug. 2, 1977), 72 Cal.App.3d 373, holding that a police officer of a chartered city with a provision similar to Section 8.103, supra, was not a "person holding a salaried office and thus not deemed to have vacated his position of police officer upon his election to the governing board of the local school district.) Accordingly, it is my opinion that the positions herein are not incompatible under the provisions of Section 8.103 of the Charter.

Section 8.105 of the Charter provides, in part, that:

" . . . (a) No member of any board or commission shall accept any employment relating to the business or the affairs of any person, firm or corporation which are subject to regulation by the board or commission of which he is a member . . ."

THE JOURNAL OF THE
ROYAL ANTHROPOLOGICAL INSTITUTE

The Journal of the Royal Anthropological Institute is a peer-reviewed journal of research in human evolution, primatology, and human biology. It is published twice a year, in May and November. The journal covers a wide range of topics, including the evolution of the human species, the evolution of the primate order, and the evolution of human biology. The journal is published by the Royal Anthropological Institute, which is a charitable organization that promotes the study of human evolution and human biology.

The journal is published by the Royal Anthropological Institute, which is a charitable organization that promotes the study of human evolution and human biology. The journal is published twice a year, in May and November. The journal covers a wide range of topics, including the evolution of the human species, the evolution of the primate order, and the evolution of human biology.

The journal is published by the Royal Anthropological Institute, which is a charitable organization that promotes the study of human evolution and human biology. The journal is published twice a year, in May and November. The journal covers a wide range of topics, including the evolution of the human species, the evolution of the primate order, and the evolution of human biology.

The journal is published by the Royal Anthropological Institute, which is a charitable organization that promotes the study of human evolution and human biology. The journal is published twice a year, in May and November. The journal covers a wide range of topics, including the evolution of the human species, the evolution of the primate order, and the evolution of human biology.

The journal is published by the Royal Anthropological Institute, which is a charitable organization that promotes the study of human evolution and human biology. The journal is published twice a year, in May and November. The journal covers a wide range of topics, including the evolution of the human species, the evolution of the primate order, and the evolution of human biology.

The journal is published by the Royal Anthropological Institute, which is a charitable organization that promotes the study of human evolution and human biology. The journal is published twice a year, in May and November. The journal covers a wide range of topics, including the evolution of the human species, the evolution of the primate order, and the evolution of human biology.

Chief Andrew C. Casper

4

December 2, 1977

Though the major thrust of Section 8.105(a) would appear to be directed toward prohibiting a member of a board or commission with regulatory powers over persons or firms in the private sector from accepting employment with any such person or firm, the provisions thereof could, in a literal sense, be applicable to the employment of a supervisor by a department of City and County government. "Regulation" has been defined as: "the act of regulating," and "regulate" has been defined as: "to fix, establish or control." (Black's Law Dictionary, Revised Fourth Ed.) Under the City and County Charter, the Board of Supervisors exercise budgetary control over all City and County departments, including the Fire Department, (Section 6.205) determine the maximum number of each class of employment in each of the various departments and offices of the City and County and fix rates and schedules of compensation therefor in the manner provided in the Charter, (Section 2.101) may require such periodic or special reports of departmental costs, operation and expenditures and examine the books, papers, records and accounts of, and inquire into matters affecting the conduct of any department or office of the City and County, (Section 2.400) establishes residence requirements for officers and employees of the City and County, (Section 8.100) may enact ordinances to implement and carry into effect the retirement provisions of the Charter, (Section 8.500) may transfer funds appropriated for one department to another, (Section 6.305) and may order the submission to the electors of general obligation bond issues (Section 7.300) and Charter amendments (Section 9.103). Under the provisions of the Government Code, the Board of Supervisors must approve any memorandum of understanding negotiated pursuant to the Meyers-Milias-Brown Act before it becomes a binding agreement (Government Code Section 3505.1; Glendale City Emp. Assoc. Inc. v. City of Glendale (1975) 15 Cal.3d 609.) Accordingly, in my opinion, a court could determine that the Fire Department is subject to regulation by the Board of Supervisors and, accordingly, that the positions of supervisor and firefighter are incompatible under the provisions of Section 8.105(a) of the Charter.

Under general law, Section 1126 of the Government Code provides, in part, as follows:

" . . . (a) A local agency officer or employee shall not engage in any employment, activity or enterprise for compensation which is inconsistent, incompatible, in conflict with, or inimical to his duties as a local agency officer or employee or with

CONTENTS
ORIGINAL ARTICLES
The Problem of the Medical Student in the United States
The Medical Student in the United States
The Medical Student in the United States
The Medical Student in the United States

ORIGINAL ARTICLES
The Problem of the Medical Student in the United States
The Medical Student in the United States
The Medical Student in the United States
The Medical Student in the United States

ORIGINAL ARTICLES
The Problem of the Medical Student in the United States
The Medical Student in the United States
The Medical Student in the United States
The Medical Student in the United States

ORIGINAL ARTICLES
The Problem of the Medical Student in the United States
The Medical Student in the United States
The Medical Student in the United States
The Medical Student in the United States

ORIGINAL ARTICLES
The Problem of the Medical Student in the United States
The Medical Student in the United States
The Medical Student in the United States
The Medical Student in the United States

ORIGINAL ARTICLES
The Problem of the Medical Student in the United States
The Medical Student in the United States
The Medical Student in the United States
The Medical Student in the United States

Chief Andrew C. Casper

5

December 2, 1977

the duties, functions or responsibilities of his appointing power or the agency by which he is employed . . ."

"Local Agency" as used in Section 1126 of the Government Code includes a city and county. (Government Code Section 1125.)

The Attorney General has concluded that under the provisions of Section 1126 of the Government Code, the position of city councilman and firefighter of a general law city are incompatible and should not be held concurrently by the same person. (Cal.Atty.Gen. Indexed Letter Opinion 74-227.) In reaching this conclusion the Attorney General stated, in part, as follows:

" . . . Additionally, we believe it beyond serious argument the employment which would prevent a city councilman from participating in budget matters, personnel matters, labor negotiations, and salary setting is additionally 'inconsistent' and 'inimical' to his duties as a city councilman within the meaning of subdivision (a) of Section 1126" (I.L. 74-227, p. 6.)

You will note the similarity between the areas of incompatibility mentioned by the Attorney General (budget matters, personnel matters, etc.) and those mentioned in the discussion of Section 8.105(a) of the Charter, supra.

In view of the foregoing, it is my opinion that a court could also find the positions of supervisor and firefighter to be incompatible under the provisions of Section 1126 of the Government Code.

Under the common law, officers are incompatible if there is any significant clash of duties between the offices, if the dual office holding would be improper for reasons of public policy, or if either officer exercises a supervisory, auditory, or removal power over the other.

However, there is some authority for treating the doctrine of common law incompatibility as inapplicable in a case, such as the case herein, where one of the positions involved is an "employment" rather than an "office." (Reilly v. Ozzard 166 A.2d 360, 366; 47 Ops. Cal.Atty.Gen. 79, 80; 40 Ops Cal.Atty.Gen.

Chief Andrew C. Casper

6

December 2, 1976

238, 239.) In view of our conclusion, supra, that the positions would be incompatible under the provisions of both Charter Section 8.105 and Government Code Section 1126, it does not appear a definitive ruling need be made on the question of incompatibility under the common law doctrine.

To summarize the foregoing, it is my opinion that the positions of supervisor and firefighter are incompatible and that such incompatibility could not be cured by the person involved taking a leave of absence from his position of firefighter during his term as supervisor.

If a court were to determine that the positions herein were incompatible, the severe consequence would be that upon entering on the duties of supervisor, Mr. White would automatically forfeit his position of H2 Firefighter in the Fire Department. (People ex rel. Chapman v. Rapsey, supra.)

Very truly yours,

THOMAS M. O'CONNOR
City Attorney

100

100

100

100

100

100

100

100

100

100

100

100

100

100

100

100

100

100

100

100

100

100

100

100

100

100

100

100

SF City Attorney

≡ Letter Opinion No. 77-50

December 6, 1977

JAN 17 1978

DOCUMENTS DEPT.
S.F. PUBLIC LIBRARY

H. LeRoy Cannon
Legal Adviser
Board of Education
135 Van Ness Avenue
San Francisco, California 94102

Subject: Retroactive Appointment of Paraprofessional
Employees

Dear Mr. Cannon:

This is in response to your request for an opinion whether the reclassification of paraprofessional employees to a higher salary schedule occurring during the fiscal year can be made retroactive to July 1 of that fiscal year.

The reclassification of positions is within the power of the Civil Service Commission (Section 3.661, Charter). The reclassification of paraprofessional positions has resulted in the creation of new positions. A position can be created only by appropriation ordinance of the Board of Supervisors (Section 8.200, Charter). At the same time that the supplemental appropriation ordinance is enacted by the Board, it must also amend the salary ordinance to provide for the new positions (Section 6.207, Charter). The amendment of the annual salary ordinance will set forth the number and rates of compensation for the newly created positions and delete the prior positions which are the subject of reclassification. The appropriation ordinance and the amendment to the salary ordinance are acted on by the Board at the same time. The ordinance creating the reclassified positions is then transmitted to the Mayor for



H. LeRoy Cannon

2

December 6, 1977

his action within ten (10) days (Section 2.302, Charter). The action of the Mayor in signing the ordinance establishes the reclassified positions as of that date.

Article 11, Section 10(a) of the California Constitution provides:

"Sec. 10(a) A local government body may not grant extra compensation or extra allowance to a public officer, public employee, or contractor after service has been rendered or a contract entered into and performed in whole or in part, or pay a claim under an agreement made without authority of law."

The State Constitution prohibits granting of additional compensation or extra allowances to any public employee after the service has been rendered (Article 11, Section 10, State Constitution). The compensation to which a public employee is entitled must be provided by law or regulation (Martin v. Henderson, 40 Cal.2d 583). A retroactive payment of salary to employees who have been performing the duties of a reclassified position prior to the effective date of the reclassification would be, in my opinion, violative of the State Constitution because it would grant extra compensation which was not authorized by law at the time.

The effective date of the reclassification is the date that the Mayor signs the appropriation ordinance adopted by the Board of Supervisors. Since no law or regulation provided for the higher salary schedule prior to the effective date of the ordinance, there is no legal authority for payment of retroactive salaries to July 1, 1977 for the paraprofessional employees whose positions are to be reclassified. Accordingly, their claim for compensation to the reclassified positions will commence from the date that the positions are reclassified by the action of the Board of Supervisors with approval by the Mayor.

Very truly yours,

THOMAS M. O'CONNOR
City Attorney

EF City Attorney
Letter Opinion No. 77-51

December 7, 1977

JAN 17 1978

DOCUMENTS DEPT.
S.F. PUBLIC LIBRARY

Andrew C. Casper, Chief
San Francisco Fire Department
260 Golden Gate Avenue
San Francisco, California 94102

Subject: Like Work-Like Pay Appointment to Exempt Rank

Dear Mr. Casper:

This is in response to your request for opinion whether a uniformed member can be appointed from the 155 Secretary to the Chief rank to the H50 Assistant Chief rank under like work-like pay status; and whether the 155 Secretary to the Chief rank can be filled through a like work-like pay appointment from among those members holding the rank of H40 Battalion Chief.

Section 7 of Salary Standardization Ordinance No. 383-77 provides for like work-like pay appointments as follows:

"All assignments of uniformed members of the Police and Fire Departments to higher ranks shall be by appointment. Provided, however, for members of the uniformed force of the Fire Department anytime less than a full watch shall be excluded."

The above quoted language authorizes like work-like pay appointments to higher ranks without distinguishing between ranks which are civil service and those which are exempt. The



Andrew C. Casper

2

December 7, 1977

ascending order of ranks, as here pertinent, are H40 Battalion Chief, 155 Secretary to the Chief and H50 Assistant Chief. It is my opinion that the Chief has the authority to make like work-like pay appointments to any of these higher ranks under the conditions of the above quoted ordinance.

It should be noted, however, that the 155 Secretary to the Chief position is created by the Charter as a singular position and only one incumbent can occupy that rank at any given time (Section 3.543, Charter; see City Attorney Opinions No. 67-95-A, dated December 19, 1967 and No. 68-85, dated November 8, 1968). Thus, no like work-like pay appointment to the Secretary position could be made as long as an incumbent is receiving compensation of that rank (see City Attorney Opinion No. 67-95-A, dated December 19, 1967 [like work-like pay appointments to exempt ranks in the police department]. A copy of the opinion is enclosed). Further, the 155 Secretary to the Chief position is an exempt civil service rank and the Chief has the authority to make appointments to and removals from that rank subject to approval of the Fire Commission (see Sections 3.543 and 3.501, Charter). Thus, a like work-like pay appointment to the rank of 155 Secretary to the Chief can be made only if the rank is vacant and if the appointment is approved by the Fire Commission. When the like work-like pay appointment is completed, the Fire Commission must approve the removal of the person assigned to that duty.

Very truly yours,

THOMAS M. O'CONNOR
City Attorney

SE City Attorney
2
Letter Opinion No. 77-52

December 8, 1977

JAN 17 1978

DOCUMENTS DEPT.
S.F. PUBLIC LIBRARY

Mr. John J. Walsh
General Manager, Personnel
Civil Service Commission
151 City Hall
San Francisco, California 94102

Subject: Salary Setting Procedures for
Transportation Promotive Series
(NP Classes)

Dear Mr. Walsh:

In your letter of October 18, 1977 you point out that since the adoption of Proposition "G" in November, 1968, adding Section 8.404 to the San Francisco Charter, it has been the practice of the City and County to grant to the Transportation Promotive Series (NP classes) pay increases equal to those granted to platform workers whose rates are fixed pursuant to the provisions of the aforementioned Charter Section 8.404, and that this practice has been uniformly followed in spite of the fact that the promotive series is and has been deemed governed by the provisions of Charter Section 8.401 during this period.

You also point out that for fiscal year 1977-78 the Board of Supervisors has determined that this practice is no longer permissible because of the provisions contained in the recently adopted Charter amendment designated as Charter Section 8.407, which provisions became operative for the first time in fiscal year 1977-78.



Mr. John J. Walsh

2

December 8, 1977

REQUEST

With the foregoing as background, your letter inquires as follows:

"Do the provisions of the new Charter Section 8.407 preclude the fixing of wages for the aforementioned Transportation Promotive Series (NP classes) in the manner in which they have been fixed since the passage of Charter Section 8.404 in November 1968?"

CONCLUSION

The answer to the question is "yes." The effect of the adoption of Charter Sec. 8.407, is to circumscribe narrowly the discretion of the Board in setting wages and salaries for members of the transportation promotive series. The role of the Civil Service Commission in surveying and calculating "prevailing rates of wages" is also defined with particularity.

DISCUSSION

You are correct that Charter Sec. 8.401 governs wage and salary setting of the transportation promotive series. The wage and salary setting of all employees falls within that section, unless, by exception, another section governs. The principal exceptions are Sec. 8.402, teachers, part-time help and certain other groups, Sec. 8.404, platform employees and coach or bus operators of the municipal railway, and Sec. 8.405, policemen and firemen. The transportation promotive series is composed of positions promotive from platform positions or the coach or bus operator positions, but does not include those positions.

Charter Sec. 8.401 provides for the recommendation of proposed schedules of compensation by the Civil Service Commission to the Board of Supervisors, and the adoption of schedules of compensation by the Board, which need not be necessarily the same as those recommended.

The compensation schedules adopted by the Board, however, ". . . shall be in accord with the generally prevailing rates of wages for like service and working conditions in private employment or in other comparable governmental organizations in this state; . . ." "Prevailing rates of wages" is not defined.



Mr. John J. Walsh

3

December 8, 1977

In City and County of San Francisco v. Boyd (1943) 22 C.2d 685, it was held that the quoted language did not require that the rates of compensation set by the Board be identical with or not higher than the generally prevailing rates, but that there be a reasonable or just correspondence between the rates established and those elsewhere prevailing. Thus, the setting of bus drivers pay at more than 5% higher than any bus driver rate prevailing elsewhere was upheld as within the discretion of the Board of Supervisors.

More recently, the Supreme Court, following the Boyd decision, held that ". . . the fact that the board chose to implement a substantially different form of pay increase than the commission had recommended does not in itself establish that the salaries authorized by the ordinance are not in accord with prevailing wages." City and County of S.F. v. Cooper (1975) 13 C.3d 898, 921 (upholding an average \$50-a-month pay increase for all miscellaneous employees).

This brief review of the judicial history of Sec. 8.401 has been set forth to contrast the effect of the adoption of Sec. 8.407 at the November 1976 election.

The effect of the adoption of Sec. 8.407 has been to greatly narrow the discretion of the board of supervisors in adopting wage schedules for miscellaneous employees. After "rate ranges" are determined by the civil service commission, pursuant to a mathematically detailed formula, and a detailed statement of comparable jurisdictions and private employers to be surveyed, the Board of Supervisors must "fix basic pay rates as close as reasonably possible to prevailing rates, provided, however, that the Board of Supervisors shall not set the maximum rate of pay for any class in excess of the maximum prevailing rate for that class" (See City Attorney Letter Opinion No. 76-64).

. It is my opinion therefore that Charter Sec. 8.407 prevents setting the wages or salaries of members of the Transportation Promotive Series by simply granting increases equal to those granted platform workers under Charter Sec. 8.404, and that the Civil Service Commission and the Board of Supervisors must comply with the provisions of Charter Sec. 8.407 in setting such wages or salaries.

Mr. John J. Walsh

4

December 8, 1977

You are so advised.

Very truly yours,

THOMAS M. O'CONNOR
City Attorney



December 8, 1977

R. Spencer Steele, Zoning Administrator
Department of City Planning
100 Larkin Street
San Francisco, California 94102

JAN 17 1978

Subject: City Planning Commission
Resolution No. 7499
Effect on Permit Applications

DOCUMENTS DEPT.
S.F. PUBLIC LIBRARY

Dear Mr. Steele:

This is in response to your request for advice as to the effect of City Planning Commission Resolution No. 7499 (a resolution of intention proposing to reclassify all residential areas of the city and to amend other portions of the text of the City Planning Code) on building permit applications filed after its adoption on May 20, 1976.

City Charter Section 7.501 provides in pertinent part as follows:

"The City Planning Commission shall consider and hold hearings on proposed ordinances and amendments thereto regulating or controlling the height, area, bulk, set-backs, location, use or related aspects of any building, or structure, or land including but not limited to the zoning ordinance and other portions of the City Planning Code. Such proposals may be initiated by the Board of Supervisors and referred to the Commission or they may be initiated by the Commission itself...Procedures for action on such matters shall be as prescribed by the Board of Supervisors by ordinance...."

Procedures for action on reclassifications and text amendments are set forth in Article 3 of the City Planning Code.



R. Spencer Steele

-2-

December 8, 1977

City Planning Code Section 302(a) provides in pertinent part as follows:

"Whenever the public necessity, convenience and general welfare require, the board of supervisors may, by ordinance, amend any part of this Code. Such amendments may include reclassifications of property (changes in the zoning map), changes in the text of the Code...Procedures for amendments shall be specified in this Section and in Sections 306 thru 306.5."

City Planning Code Section 302(b) provides in relevant part, "An amendment may be initiated by the Board of Supervisors or by a resolution of intention by the City Planning Commission...."

The effect of proceedings before the City Planning Commission with respect to proposed reclassifications and text amendments is provided under City Planning Code Sections 302(e) and 302(f). City Planning Code Section 302(e) provides in pertinent part as follows:

"Effect of reclassification...upon permit applications. No application for a building permit on any property or for any other permit or license for a new use or any property, filed subsequent to the date that an application has been filed or a resolution of intention has been adopted for the reclassification of such property...shall be approved by the Department of City Planning while proceedings are pending under such reclassification...unless the construction and use proposed under that permit or license would conform both to the existing classification of such property...and also to the different classification...under consideration in those proceedings; provided that if final action on such reclassification has not been taken by the board of supervisors during the



R. Spencer Steele

-3-

December 8, 1977

following time periods after the start of the proceedings, conformity to the different classifications...under consideration shall no longer be required:

(1) two years in the case of a city-wide...reclassification...of this Code;

*** (3) in addition to the above time periods the board of supervisors may by resolution extend such time for a further period of up to six months." (Emphasis added.)

City Planning Code Section 302(f) provides in relevant part as follows:

Effect of text amendment proceedings upon permit applications. No permit or license for any construction or use which would be newly prohibited by an amendment to the text of the City Planning Code shall be granted or issued on or after the effective date of such text amendment. In the case of concurrent proceedings for both the text amendment and a property reclassification...as described in subsection (e) above, the more restrictive requirement with respect to permits and licenses shall prevail."... (Emphasis added.)

City Planning Commission Resolution 7499 states in pertinent part as follows:

"The City Planning Commission does hereby declare its intention to reclassify property throughout the City and County of San Francisco and amend the text and maps of the City Planning Code as proposed on the maps titled 'Proposed Residential Zoning Districts', Sheets 1 through 13 dated May 20, 1976, with modifications indicated as neighborhood proposed zoning items 3, 11 and 12 on the map

titled 'Alternate Zoning Proposals', Sheet 5 and Item 1 on the map titled 'Alternate Zoning Proposals', Sheet 7 with the modification of Lots 22, 23, 24, 32, 35 through 45 and 59 in Assessors Block 1275 to an R-H-2 District; the memorandum titled 'Residential Zoning Studies: Proposed Zoning Maps and District Standards' dated May 20, 1976; the use table titled 'Permitted Residential Uses' dated May 20, 1976, with the modifications to add a hotel as a 'C' use in an R-H-2 district and to delete a trailer camp as a 'C' use in all R-H districts; the use table titled 'Non-Residential Uses Permitted in Residential Districts' dated May 20, 1976; the 15 documents titled 'Zoning Regulations For Proposed R-H-1(d), R-H-1, R-H-2, R-H-3, R-M-1, R-M-2, R-M-3, R-M-4, R-A-1, R-A-2, R-A-4, R-C-1, R-C-2, R-C-4 and PR districts' dated May 20, 1976; the document entitled 'Building Length Averaging - Typical Situations' Sheets 1 through 5 dated May 20, 1976; and the document titled 'Table A, Maximum Percent of Features Credited to Usable Open Space Requirements' dated May 20, 1976, all as submitted to the City Planning Commission by the Department of City Planning on May 20, 1976...." (Emphasis added.)

In view of the foregoing, I have concluded that City Planning Commission Resolution No. 7499 constitutes a resolution of intention for the reclassification of property on a city-wide basis. I have further concluded that the Resolution further involves text amendments to the City Planning Code. Therefore during the period from May 26, 1976, the date on which Resolution No. 7499 was adopted by the City Planning Commission, to May 20, 1978, two years after the adoption of the Resolution, no application for permits may be approved unless the proposed construction or use would comply with both the existing classification of the property and to the different classification under consideration pursuant to that Resolution.



R. Spencer Steele

-5-

December 8, 1977

Furthermore, no permit may be issued unless the proposed construction or use complies with the standards set forth in the text amendments proposed under that Resolution.

You also inquire as to the appropriatenes of the variance procedures provided under City Planning Code Section 305 as an administrative remedy where a permit application, filed subsequent to May 20, 1976, proposes construction or a use not in conformity with the standards proposed pursuant to City Planning Commission Resolution No. 7499. I have reviewed the relevant law and have concluded that, subject to the limitations set forth in City Charter Section 7.503 and City Planning Code Section 305, the Zoning Administrator is authorized to hear and determine variances from the standards proposed under that Resolution.

You are so advised.

Very truly yours,

THOMAS M. O'CONNOR,
City Attorney



December 20, 1977

Mr. John C. Spring, General Manager
Recreation and Park Department
McLaren Lodge, Golden Gate Park
San Francisco, Calif. 94117

JAN 17 1978

DOCUMENTS DEPT.
S.F. PUBLIC LIBRARY

Attention: Mr. Aldo C. Cima
Superintendent of Parks

Subject: Mather Family Camp - Fees and Charges

Dear Mr. Spring:

We have received your letter of November 1, 1977, regarding problems of overcrowded conditions at Mather Family Camp. Mather Family Camp is located near Yosemite National Park, 185 miles from San Francisco in Tuolumne County, and contains cottages which can house about 400 persons, two tennis courts, horseshoe courts, campfires, a swimming pool, an artificially created lake (Birch Lake) and other recreational facilities. The camp is open to registered guests during the summer months. Non-residents of the City and County of San Francisco are charged more for use of the camp than residents. The cost of registration permits the guest to use all the camp facilities free of additional charge, except for grocery store and horseback riding concessions.

You state in your letter: "People who are not registered guests have been using the facilities at Mather Family Camp, and therefore keeping our paying guests from using them . . . Since Mather Family Camp is more accessible to transients, we are overloaded in the swimming areas. Weekends and holidays are so crowded that it becomes a problem for our lifeguards to supervise these areas properly." You have proposed certain changes to alleviate this problem. The legal questions raised by these changes include the following:

1. May persons not registered at Camp Mather be charged for the use of Camp facilities?



Mr. John J. Spring

2

December 20, 1977

2. May additional lifeguards be hired and may this cost be passed on to users of swimming areas through admission fees?

3. May the number of swimmers admitted at any given time be limited to provide safer use of the swimming areas?

4. May signs be posted informing users of the cost of admission to the facilities?

5. May nonresidents be charged a higher fee than residents for use of the facilities?

1. May persons not registered at Camp Mather be charged for the use of Camp facilities?

The Charter of San Francisco does not explicitly authorize the Recreation and Park Commission to charge admission fees to its recreational facilities. However, the Charter gives the Commission "the complete and exclusive control, management and direction of the parks, playgrounds, recreation centers and all other recreational facilities, squares, avenues and grounds which are in the charge of the commission," (3.552) and implicit in this delegation of power is the authority to impose such fees.

The courts have consistently found that the power to make rules and regulations for park properties includes the power to impose reasonable admission fees for "special entertainment" or "extra facilities furnished for physical, intellectual or aesthetic enjoyment." Bernstein v. City of Pittsburgh (1951) 366 Pa. 200, 77 A.2d 452 at 456. See also, McGuire v. City of Cincinnati (Court of Appeals of Ohio, 1941) 40 N.E.2d 435.

If the Commission decides that persons registered at the Camp have paid for use of the facilities as part of the cost of registering and that only persons not registered shall be required to pay before gaining admission, this decision is clearly within the policy-making authority of the Commission.

Therefore, the Recreation and Park Commission has the authority to charge reasonable admission fees to persons not registered at the Camp for use of the swimming pool, tennis courts and other recreational facilities at Camp Mather.



Mr. John J. Spring

3

December 20, 1977

2. May additional lifeguards be hired and may this cost be passed on to users of swimming areas through admission fees?

The decision to utilize additional lifeguards in swimming areas at Camp Mather is also clearly within the authority of the Recreation and Park Commission.. (San Francisco Charter sections 3.550-3.552.) As noted above, "reasonable" admission fees may be charged for special park facilities. The cost of hiring extra personnel necessary for the operation of the facility can be placed on the users of that facility. As the court in McGuire v. City of Cincinnati, supra, notes:

"... the matter of financing the enterprise falls within the field of policy and not of power. It is for the policy-making department and not the courts to determine whether the activity shall be financed by funds raised by taxation on all, or whether those who are especially benefited shall be required to pay all or a part." 40 N.E.2d at 438.

Thus the cost of hiring additional lifeguards can be reflected in the cost of admission charged to the users of the swimming facilities.

3. May the number of swimmers at any given time be limited to provide safer use of the swimming areas?

The Recreation and Park Commission also has the authority to limit the number of persons using swimming areas at any one time. In McClain v. City of South Pasadena (1957) 155 C.A.2d 423, 318 P.2d 199, the court held that a city could properly enact a regulation allowing only residents to use a municipal plunge. The court states:

"Any city may make and enforce within its limits all such local, police, sanitary, and other regulations as are not in conflict with general laws. (Constitution, art. XI, Sec. 11, Simpson v. City of Los Angeles, 40 C.2d 271, 278 [253 P.2d 464].) The power to make local and police regulations is very broad and far reaching A regulation designed to prevent congestion in a municipal plunge is a valid exercise of the police power for the health, safety, morals and general welfare. The very nature of a plunge limits the number of those who may use it at one time." 155 C.A.2d at 434, 437.

THE JOURNAL OF THE

THE JOURNAL OF THE

THE JOURNAL OF THE

THE JOURNAL OF THE

THE JOURNAL OF THE

THE JOURNAL OF THE

THE JOURNAL OF THE

THE JOURNAL OF THE

THE JOURNAL OF THE

THE JOURNAL OF THE

THE JOURNAL OF THE

THE JOURNAL OF THE

THE JOURNAL OF THE

THE JOURNAL OF THE

Mr. John J. Spring

4

December 20, 1977

A regulation passed by the Commission limiting the number of persons who could use the swimming area at any one time would also be designed to prevent congestion and protect the safety, comfort and convenience of the persons using it. Such a regulation would clearly be valid.

4. May signs be posted informing users of the cost of admission to the facilities?

Signs informing the public of the cost of admission to swimming areas may be posted under the authority of either Section 15 or 16 of the Park Code, both of which require the public to obey all rules or regulations of the Commission which are clearly posted in the area to which the rule or regulation applies. Once the Commission approved the charging of admission fees and the exclusion of any person from the facility who did not pay such fee or who was not a registered guest at Camp Mather, a sign could be posted at the entrance to the facility to so inform the public.

5. May nonresidents be charged a higher fee than residents for use of the facilities?

The most recent decisions make clear that a city may validly impose higher costs on nonresidents for use of public recreational facilities. Thus in Hyland v. Borough of Allenhurst (1977) 148 N.J.Super. 434, 372 A.2d 1133, the court upholds the city's right to charge nonresidents a higher fee for membership in a city-operated facility:

"The trial judge himself noted the logic in the disparate charges because residents were already paying for Club facilities as part of their tax bill. The difference in charge for membership is not discriminatory, but rather represents an attempt to equalize the nonresident and resident financial contributions to the maintenance of club facilities. Were the fees to be equal, residents would in fact be paying more than nonresidents for membership." 372 A.2d at 1137.

See also cases discussed in 57 ALR3d 998.

In California the right to classify on the basis of residence has been held to include the right to exclude nonresidents



Mr. John J. Spring

5

December 20, 1977

completely from municipal recreation facilities provided the classification has some basis in reason. In McClain v. City of South Pasadena, supra, the court upheld the city's right to exclude nonresidents from the use of the municipal plunge in order to avoid congestion, stating:

"A regulation making different provisions for people residing outside a municipality from those residing in it is valid if the classification is based on a reasonable distinction . . . The classification [excluding nonresidents from the plunge] is reasonably related to the end in view. It bears a real and substantial relation to the health, safety, morals, and general welfare of the residents of South Pasadena. South Pasadena has the sovereign duty of maintaining the health of its residents [citations]. It owes no such duty to nonresidents. Residents are entitled to preference over nonresidents and such action is not in contravention of the rights of nonresidents. The primary purpose of a municipal corporation is to contribute toward the welfare, health, happiness, and interest of the inhabitants of such corporation, and not to further the interests of those residing outside its limits." 37 Am.Jur.736, Sec. 122. 155 C.A.2d at 434, 438.

If a city has the authority to exclude nonresidents altogether from a recreational facility, it certainly has the authority to impose a less severe restriction in the form of higher fees. The city's duty to maintain the health of its own residents and its right to consider the financial costs already imposed on residents and its right to consider the financial costs already imposed on residents through tax obligations both provide valid and rational reasons for giving residents financial preference over nonresidents in the use of Camp Mather.

To summarize, persons not registered at Camp Mather may be charged for the use of camp facilities; additional lifeguards may be hired and the cost may be passed on to users of swimming areas through admission fees; the number of swimmers admitted at any time may be limited to provide safer use of the swimming areas; signs may be posted informing users of the cost of admission to facilities; and nonresidents may be charged a higher fee than residents at Camp Mather.

Very truly yours,

THOMAS M. O'CONNOR
City Attorney



47
3
-55

SF City Attorney

Letter Opinion No. 77-55

December 20, 1977

JAN 17 1978

Mr. Rai Y. Okamoto
Director of City Planning
100 Larkin Street
San Francisco, California 94102

DOCUMENTS DEPT.
S.F. PUBLIC LIBRARY

Subject: Application of CEQA to
the FAA Control Tower at SFIA

Dear Mr. Okamoto:

This is in response to your letter of November 7, 1977, in which you request advice of this office, based upon an attached letter of October 18, 1977, that you received from San Francisco Tomorrow, concerning application of the California Environmental Quality Act of 1970 as amended (CEQA) to the prospective Federal Aviation Administration control tower at San Francisco International Airport.

CEQA is contained in Public Resources Code §§21000 et seq. Section 21151 provides that:

"All local agencies shall prepare, or cause to be prepared by contract, and certify the completion of an environmental impact report on any project they intend to carry out or approve which may have a significant effect on the environment. . ."

The San Francisco International Airport Expansion Program dated December, 1972 is an integrated plan consisting of many single elements grouped into an over-all project or program. The FAA control tower is a specified element in the Expansion Program. For purposes of the environmental review requirements of CEQA the Expansion Program itself is the "project" within the meaning of Public Resources Code Section



Mr. Rai Y. Okamoto

2

December 20, 1977

21065(a) which states "Project means . . . (a) activities directly undertaken by any public agency" and the guidelines issued thereunder, Cal. Admin. Code, tit. 14, §15037(a) which states "Project means the whole of an action, which has a potential for resulting in a physical change in the environment . . ." (Emphasis added). See Friends of Mammoth v. Board of Supervisors, 8 C. 3d 247, 264-265; Environmental Defense Fund, Inc. v. Coastside County Water Dist. 27 C.A.3d 695, 706-707; Edna Valley Assn. v. San Luis Obispo Etc. Coordinating Council, 67 C.A.3d 444, 447-448.

In August 1973 the Department of City Planning prepared a draft Environmental Impact Report (EIR), EE 73.88, on the Airport Expansion Program. Public hearings on the draft EIR were held in September and October 1973 in San Mateo County and San Francisco at which time comments to it were received and responded to. On October 18, 1973 the Planning Commission reviewed the draft EIR, found it to be adequate, accurate and objective and certified its completion as a final EIR. The Planning Commission further found the Airport Expansion Program will have a significant effect on the environment. Resolution No. 7091, copy enclosed.

On November 7, 1973 the Airports Commission adopted the final EIR, as certified by the Planning Commission, approved the Expansion Program and resolved that it be carried out. Resolution Nos. 73-0234, 73-0235, copies enclosed.

On December 26, 1973, the Board of Supervisors adopted the final EIR, incorporated the findings of Airports Commission Resolution No. 73-0235, and resolved that the Expansion Program be carried out. Resolution No. 856-73, copy enclosed.

In January 1974 a petition for writ of mandamus was filed in Superior Court seeking to set aside the above mentioned resolutions adopting the final EIR and approving the Airport Expansion Program. The Court concluded the final EIR to be adequate, held the findings of the Airports Commission and Board of Supervisors to be supported by substantial evidence and entered judgment denying the petition. The judgment was upheld on appeal. San Francisco Ecology Center v. City and County of San Francisco, 48 C.A.3d 584, 598; petition for hearing by the Supreme Court denied July 23, 1975.



Mr. Rai Y. Okamoto

3

December 20, 1977

By virtue of the foregoing, it is clear the environmental impact report provisions of CEQA on the Airport Expansion Program have been met and are final. Since the FAA control tower is a specified element of the "project" which has been administratively reviewed and approved, tested by litigation and upheld, and since the tower has remained unchanged and unaltered in size-conception and location, I am of the opinion there is no legal requirement for further CEQA review.

Of further significance for discussion herein is the fact that the FAA control tower is a federal facility and is so described in the final EIR (Appendices A-7). An appropriation of \$2,100,000 is being provided by the United States Government to assist in financing construction of the tower. Once completed it will be under lease to the Government to September 30, 2007. See Airports Commission Resolution No. 77-0144, May 17, 1977, and Board of Supervisors Resolution No. 549-77, July 5, 1977 (copies enclosed), approving Contract No. DOT FA76WE-3747 with the Federal Aviation Administration.

An Environmental Impact Statement (EIS) has been prepared by FAA on the Airport Expansion Program pursuant to the National Environmental Policy Act (NEPA), 42 U.S.C. §4321 et seq. (1970) and certified as final on April 18, 1977. The FAA control tower is also a described and discussed item in the EIS.

You are so advised.

Very truly yours,

THOMAS M. O'CONNOR
City Attorney



December 29, 1977

Recreation and Park Commission
McLaren Lodge, Golden Gate Park
San Francisco, Calif. 94117

JAN 17 1978

DOCUMENTS DEPT.
S.F. PUBLIC LIBRARY

Attention: Mr. John J. Spring
General Manager

Subject: Recreation and Park Commission -
Leases at Aquatic Park to Rowing
Clubs

Dear Members of the Commission:

This office has reviewed your letter of October 12, 1977 requesting an opinion regarding the legality of "... the imposition of a rental fee upon two rowing clubs located at Aquatic Park (Dolphin and South End)." The analysis of this question calls for the resolution of three separate issues. First, does a lease of this property violate the terms of the statutory grant of the property in question from the State of California? Second, may the City allow a private club to occupy, operate and maintain park property and, if so, under what conditions? Third, what criteria must be considered in arriving at an appropriate rental fee for public park property?

The club houses have been on public property since before 1900. In 1938, pursuant to agreement with the City, they were moved from the foot of Van Ness Avenue to Aquatic Park in order to facilitate the construction of the municipal pier. Since 1958 the clubs have held as holdover tenants on a month-to-month basis. The clubs at present pay no rent.

Statutory Grant

The land upon which the rowing clubs are located was granted to the City and County of San Francisco by the State of California in Chapter 88 of the Statutes of 1923, page 163, May 2, 1923. That grant provided in relevant part:

1971 (196)
1972 (197)

1973 (198)



Recreation & Park Commission 2

December 29, 1977

"No grant, conveyance or transfer of any character should ever be made by the City and County of San Francisco of the land herein granted or any part thereof. . . ."

The initial question is whether the lease of the property to the rowing club would constitute a "grant, conveyance or transfer" proscribed by the 1923 grant. The lands division of the State Lands Commission has responded to an inquiry from this office advising that a lease for no less than one year, nor more than forty-nine years, is permissible. Under the terms of the grant the property must be used in conjunction with other City property as an "aquatic park." Therefore, any lessee must engage in aquatic park related activities.

Lease to Private Club

The clubs occupying the club houses are private and have exclusive possession and control of the club houses and facilities. Only club members may use the facilities. The statutory grant from the State of California provides in relevant part,

"Said lands are hereby conveyed to said City and County For the purpose of being used in conjunction with other property now owned by the said City and County of San Francisco as an aquatic park." (Emphasis added.)

And Charter Section 3.552 provides in relevant part that the duty of the Recreation and Park Commission shall be ". . . to promote and foster a program providing for organized public recreation of the highest standards." (Emphasis added.)

It is a well established legal principle that private organizations may not lease or use public park property for an extended period of time to the exclusion of the general public. In San Vicente Nursery School v. County of Los Angeles, 147 Cal. App.2d 79, 87 the court held invalid an agreement pursuant to which a non-profit co-op nursery school had exclusive use of a park building noting,

"The primary purpose of such exclusive use was a benefit to a limited number of children attending the schools and their parents, and such exclusive use by a private group was not a public use or purpose."



Recreation and Park Commission 3

December 29, 1977

See also Lincoln Park Trap v. Chicago Park District, 55 NE 2d 173 (1947) in which the court held invalid a lease of park property to a private club. Though non-members were admitted to the club facility, they were not allowed equal access to club facilities. Said the court at 55 NE 2d 177,

"The law is well settled that a park board cannot lease a portion of its land to a private individual club or corporation, when by the terms of such lease the demised land and facilities located thereon are not available equally to all the people of the State of Illinois. (Emphasis added.)

And in Vale v. San Bernardino 109 Cal.App. 102 (1930) the court upheld the use of a publicly owned building (Fascimile Log Cabin) by a private club. At 109 Cal.App. 108 the court emphasized that any event held by the clubs in the building, ". . . is as much open to the public at all times as to any members of those organizations, and that even at such time as the building may be closed, it will be open to anyone upon request. To our minds this shows neither a diversion of the property from park purposes, nor such an exclusive use thereof as could be held to interfere with the full and free public use contemplated by law."

And this office in a series of opinions has ruled that park property must be made available to all members of the public on an equal basis. Opinion No. 636 dated December 8, 1952 stated in relevant part,

"In addition, it should be noted that not only must a lease of public park property under the jurisdiction and control of the Recreation and Park Commission be for 'recreational purposes', but the general doctrine of law is that park property must be leased for a public as distinguished from a private purpose. This doctrine distinguishes leases of park property from leases of other city property. A lease of park property must be for the benefit and enjoyment of the general public as distinguished from the benefit and enjoyment of selected private individuals even though the general purpose of the lease be recreational in character."

See also Letter Opinion No. 70-68 dated December 1, 1970 which refers to prior opinions of this office as follows:



Recreation & Park Commission

4

December 29, 1977

"This office has on prior occasions concluded that park property could not be set aside for exclusive use and control by private persons or groups. See Opinion No. 90, dated December 14, 1949, Lease to the San Francisco Football League to have exclusive control of Balboa Park; Opinion No. 332, dated February 23, 1951, Use of West End Stables in Golden Gate Park; Opinion No. 456, dated November 2, 1951, Erection of stable by the Equestrian Foundation in Golden Gate Park; Opinion No. 558, dated June 12, 1952, Permission to sublet for non-veteran activities; Opinion No. 618, dated October 20, 1952, Rental of stalls at stables in Golden Gate Park to private horse owners; Opinion No. 1166, dated May 10, 1957, Use of recreation and park facilities for Cooperative Nursery Schools. A subsequent opinion on the use of cooperative schools, dated August 5, 1957, and numbered 1163; Opinion No. 1184, dated August 6, 1957. Use of a portion of Sharps Park for construction of a Boys' Club; Opinion No. 1262, dated May 28, 1958, Permit to construct convenience stations at Sharps Park; Opinion No. 6243, dated August 28, 1962, Tourist and Convention Booth; Opinion No. 6228, dated May 25, 1962, Fire Department Headquarters."

The standard to guide leases of park property to private clubs was articulated in Opinion No. 1184, dated August 6, 1957, which stated in part,

"... to constitute a public use, as required by the Charter all persons must have equal right to use property and it must be in common and on the same terms."

Not only must the rowing clubs make the facilities available to the general public as well as to its own members, they must also provide a membership selection procedure which does not arbitrarily discriminate against persons in violation of the Fourteenth Amendment to the U. S. Constitution. Burton v. Wilmington Parking Authority (1961) 365 U.S. 715, 81 S.Ct. 856, 6 L.Ed.2d 45; Gilmore v. City of Montgomery (1974) 417 U.S. 556, 94 S.Ct. 2416, 41 L.Ed. 304; Statom v. Board of Commissioners of Prince



Recreation & Park Commission 5

December 29, 1977

George's County (1963) 233 Md. 57, 195 A.2d 41. Discrimination is arbitrary if it is based on personal preference (In re Cox (1970) 3 Cal.3d 205, 90 Cal.Rptr. 24, 474 P.2d 992, Ferguson v. Giles, 82 Mich. 358, 46 N.W. 718), as well as on the more frequently listed categories of race, color, religion, ancestry, national origin or sex.

However, while organizations using park property may not exclude applicants for membership because of personal preference or any other arbitrary reason - as may private clubs operating on private property - they may discriminate among applicants so long as the classification has a "substantial relation to a legitimate objective." In re Cox, *supra*, p. 215 (compare Flores v. Los Angeles Turf Club (1961) 55 Cal.2d 736, 13 Cal.Rptr. 201 where the court allows the exclusion of persons convicted of illegal wagering from race tracks). The "legitimate objective" of a lease of park property is the promotion of the property for public recreational use. Any exclusion of persons must be related to that objective. For example, the exclusion from the rowing clubs of persons who have a record of conduct indicating that their admission would threaten the safety of property or persons using the property would be reasonable and not arbitrary.

Finally, the right to use the property cannot be taken away or denied to anyone without procedures which comport with due process. Goldberg v. Kelly (1970) U.S. 254, 90 S.Ct. 1011, 25 L.Ed. 2d 287, Skelly v. State Personnel Board (1975) 15 Cal.3d 194, 124 Cal.Rptr. 14, 539, P.2d 774.

In conclusion, the City may lease its park property to private clubs provided that all members of the public be presumptively entitled to membership in the clubs on a first-come first-serve basis with a showing of good cause needed for refusal to admit to membership, with dismissal allowed only following a hearing and provided that non-members be allowed equal access to all the club's facilities. Reasonable limitations on admissions relating to the physical capacities of the clubs may be imposed. The clubs may charge reasonable initiation fees and monthly dues to members as well as fees for daily use. The lease between the clubs and the Recreation and Park Commission should provide that club by-laws, membership policies, provision for access to public and all fees and/or dues collected by the clubs be subject to the approval of the Recreation and Park Commission.



Recreation & Park Commission 6

December 29, 1977

Imposition of Rental Fee

San Francisco Charter Section 7.403 provides in relevant part:

" . . . the recreation and park commission shall not lease any part of the lands under its control nor permit the building or maintenance or use of any structure on any park, square, avenue or ground, except for recreational purposes . . . "

The use by the rowing clubs of park property, subject to the conditions set forth above, is clearly a recreational purpose as contemplated by Charter Section 7.403.

When the question arises as to whether it is proper to impose a rental fee for a lease to these clubs, it must be kept in mind that any fee imposed will be passed on to the members in the form of monthly dues and to non-members in the form of daily use fees. Whether a charge is made for recreational facilities is a public policy matter (McGuire v. City of Cincinnati (1941, Court of Appeals of Ohio) 40 N.E.2d 435), provided that the fees charged are "reasonable" and "non-discriminatory." See Bernstein v. City of Pittsburgh (1951) 366 P.A. 200, 700 A.2d 452, and MacNeil v. Chicago Park District (1948) 401 Ill. 566, 82 N.E. 2d 452. Thus any rental charges imposed on the rowing clubs cannot be so great as to necessitate unreasonable or excessive dues or daily use fees. Unreasonable or excessive fees would effectively exclude members of the public who but for the onerous fees would join the club or use the facilities, causing a breach by the commission of its obligations to make public park property accessible to as broad a spectrum of the public as possible.

In addition, it must be noted that since the clubs manage the facilities and relieve the city of any expense of operation or maintenance of the property, any rental fee will be a source of revenue to the city (money obtained from the lease of park property goes into the Recreation and Park fund, Section 7.403(b)). Revenue-making agreements between municipalities and concessionaires for the operation of public park facilities have been upheld (Cohen v. Samuel (1951) 367 Pa. 268, 80 A.2d 732). Thus the fact that the City will receive revenue in the lease to the rowing clubs is proper so long as the amount of the rental does not necessitate excessive fees charged to the public for use of the facilities.

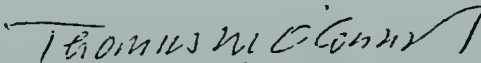
Recreation & Park Commission 7

December 29, 1977

Therefore, in setting the rental fee to be charged the clubs, the Recreation and Park Commission must determine that such rental not result in club members and daily users paying unreasonable fees. Any revenue derived from the lease may not be gained at the cost of violating the Commission's duty to make park property available to the public.

You are so advised.

Very truly yours,


THOMAS M. O'CONNOR
City Attorney



